(9)

No. 00-492-CSY Title: Alabama, Petitioner
v.
Michael Herman Bozeman

Docketed: October 2, 2000 Court: Supreme Court of Alabama

Entry	Date	Proceedings and Orders
	Sep 28 2000	Petition for writ of certiorari filed. (Response due November 1, 2000)
	Nov 1 2000	Brief of respondent Michael H. Bozeman in opposition filed.
	Nov 15 2000	DISTRIBUTED for Conference of December 1, 2000
	Dec 4 2000	REDISTRIBUTED for Conference of December 8, 2000
	Dec 11 2000	Petition GRANTED. limited to Question 1 presented by the petition. SET FOR ARGUMENT April 17, 2001. **********
	Dec 27 2000	Motion of respondent for leave to proceed further herein in forma pauperis filed.
	Dec 27 2000	Motion of respondent for appointment of counsel filed.
	Jan 10 2001	Motions DISTRIBUTED. February 16, 2001 (page 4)
	Jan 25 2001	Brief amicus curiae of United States filed.
	Jan 25 2001	Joint appendix filed.
	Jan 25 2001	Brief of petitioner Alabama filed.
	Jan 25 2001	Brief amicus curiae of National Association of Extradition Officials filed.
	Feb 20 2001	Motion of respondent for leave to proceed further herein in forma pauperis GRANTED.
	Feb 20 2001	Motion for appointment of counsel GRANTED and it is ordered that Mark John Christensen, Esquire, of Andalusia, Alabama, is appointed to serve as counsel for the respondent in this case.
	Feb 22 2001	CIRCULATED.
	Feb 27 2001	Record filed.
	Feb 27 2001	Brief of respondent Michael H. Bozeman filed.
	Mar 6 2001	Record filed.
	Mar 9 2001	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
	Mar 23 2001	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument DISTRIBUTED.
	Mar 26 2001	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
	Mar 29 2001	Reply brief of petitioner Alabama filed.
	Apr 17 2001	ARGUED.

Supreme Court, U.S.
FILED

00-492 SEP 28 2000

No. _____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

STATE OF ALABAMA,

Petitioner,

v.

MICHAEL HERMAN BOZEMAN,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Alabama

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Interstate Agreement on Detainers Act (IAD) is an agreement between 48 states, including the State of Alabama, the District of Columbia, and the federal government, entered by the party states to encourage the expeditious and orderly disposition of untried indictments, informations, or complaints and to encourage the determination of the proper status of any and all detainers based on such charges, in order to eliminate uncertainties which obstruct programs designed to treat and rehabilitate prisoners. Article IV(e) of the IAD provides that an indictment should be dismissed, with prejudice, if a prisoner is returned to a sending state before the resolution of pending charges. The following questions are presented for this Court's consideration:

1. Does transfer of federal custody to state custody for one day for purposes of arraignment, and transfer back to federal custody before the disposition of outstanding charges, a technical violation of the Interstate Agreement on Detainers Act, require dismissal of pending charges, even when there is no harm to the prisoner either alleged or demonstrated?

2. Is a state compelled to follow federal law in interpreting the provisions of the Interstate Agreement on Detainers Act, because the Act is a congressionally sanctioned interstate compact the interpretation of which presents a federal question?

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

The State of Alabama respectfully petitions for a writ of certiorari to review the judgment of the Alabama Supreme Court in this case.

OPINIONS BELOW

The decision of the Alabama Court of Criminal Appeals affirming Bozeman's convictions and sentences is an unpublished memorandum opinion, and is contained in the Appendix at App. 15-26. The decision of the Alabama Supreme Court reversing Bozeman's convictions is not yet reported, but can be found at *Ex parte Bozeman*, No. 1971759, 2000 WL 429936 (Ala. Apr. 21, 2000), and is contained in the Appendix at App. 1-14.

JURISDICTION

The decision of the Alabama Supreme Court reversing Bozeman's convictions was entered on April 21, 2000. A petition for rehearing was denied on June 30, 2000. Appendix at App. 30. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Constitutional provision is involved in this case:

The Compact Clause of the United States Constitution, which provides:

> No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

U.S. Const., art. I, § 10, cl. 3. The following statutory provisions are involved in this case, as well:

Section 2111 of Title 28 of the United States Code, which provides:

> On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

28 U.S.C. § 2111.

The Interstate Agreement on Detainers Act, also referred to as the Uniform Mandatory Disposition of Detainers Act, which is codified in Alabama in Sections 15-9-80 through 15-9-88 of the 1975 Code of Alabama, and is contained in the Appendix at App. 32-47.

Rule 45 of the Alabama Rules of Appellate Procedure, which provides:

> No judgment may be reversed or set aside, nor new trial granted in any civil or criminal case on the ground of misdirection of the jury, the giving or refusal of special charges or the improper admission or rejection of evidence, nor for error as to any matter of pleading or procedure, unless in the opinion of the court to which the appeal is taken or application is made, after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected the substantial rights of the parties.

STATEMENT OF THE CASE

This case arises out of the transfer of custody of Michael Bozeman between federal authorities and state authorities in Covington County, Alabama, and involves the application of the Interstate Agreement on Detainers Act, to which both the federal government and the State of Alabama are parties.

A. Relevant Events Occurring Prior To Trial And In The Trial Court

On June 15, 1995, Michael Herman Bozeman was arrested on a federal charge of intimidating a witness, and he was placed in the county jail in Covington County, Alabama, under a hold by federal authorities. (HR. 199-200, 205, 214)[1] On June 16, 1995, he was also arrested

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[1] "HR." refers to the transcript from the hearing on Bozeman's motions to dismiss his indictment on the grounds

on federal charges of conspiracy to possess with the intent to distribute methamphetamine and his custody was transferred to federal authorities, but he was placed in the county jail in Montgomery County, Alabama. (HR. 209; C. 13, 102) Subsequently, on November 3, 1995, Bozeman pleaded guilty to the federal drug charge and he was sentenced to not less than 5 years nor more than 40 years; the federal charge of intimidating a witness was apparently dismissed. (C. 13, 102, 182)

Bozeman was indicted by the September 1996 Grand Jury of Covington County on two counts of discharging a firearm into an occupied dwelling, two counts of discharging a firearm into an unoccupied vehicle, and one count of discharging a firearm into an unoccupied dwelling (Case No. 97-16). (HR. 207; C. 1-3) These charges arose out of several incidents that occurred in June of 1995 and are the charges that formed the basis of this petition.[2] On October 10, 1996, the Covington County

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the Interstate Agreement On Detainers Act had been violated; "C." refers to the clerk's record on appeal; "Arr." refers to the record from the arraignment in this case; and, "R." refers to the record from the trial of this case. All of these documents are a part of the record on appeal in this case.

[2] In September 1995, while Bozeman was in federal custody, he was indicted by a Covington County Grand Jury for the unlawful possession or receipt of a controlled substance (Case No. CC-95-350) for an incident occurring in May of 1995. (HR. 208-09) Temporary custody of Bozeman was obtained from the federal authorities by Covington County authorities in November 1995 for the specific purpose of arraignment, and Bozeman was arraigned and appointed counsel on that charge. (HR. 209-10; C. 177-78) Subsequent to his arraignment and before the disposition of the state drug charge, Bozeman was

District Attorney requested that a detainer be placed on Bozeman so that he could be arraigned in Covington County on the shooting charges. (HR. 211; C. 180) The Covington County District Attorney specifically requested that Bozeman be made available for his upcoming arraignment on the shooting charges and requested that all necessary forms be mailed to her for completion and return to the proper federal authorities in sufficient time before arraignment for the State to obtain Bozeman. (C. 180) The federal authorities in Atlanta responded that a detainer had been filed on Bozeman pursuant to the District Attorney's "October 29, 1996" request. (HR. 211-12) The record contains a notice to Bozeman of untried indictments and the right to request disposition of the charges in the shooting cases pursuant to Article III of the IAD, which he signed on November 4, 1996, acknowledging receipt. (C. 75)

Because Bozeman had been transferred from the Atlanta Federal Penitentiary to the federal prison in Marianna, Florida, the Covington County District Attorney's request for a detainer did not reach Bozeman until January of 1997. (HR. 211-12) On January 8, 1997, the District Attorney sent a letter and temporary custody form to the federal prison authorities in Marianna, Florida. (C. 179) The letter and form indicated that Bozeman was needed

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returned to the custody of the federal authorities. (HR. 214) In June of 1996, the state drug charge was nolle prossed or dismissed. (HR. 213-14) At no time before his state drug charge was nolle prossed did Bozeman raise any allegations that his transfer from federal custody to state custody and back to federal custody violated the Interstate Agreement on Detainers Act (IAD).

for arraignment and appointment of counsel in the shooting case, case number CC-97-16, and that Bozeman would be picked up on January 15, 1997 and returned to federal authorities one day later, on January 16, 1997. (C. 179) It was not until January 23, 1997, however, that temporary custody of Bozeman was transferred from federal authorities to Covington County authorities. (HR. 201, 203, 215) The next day, January 24, 1997, Bozeman was arraigned on the shooting charges and custody of Bozeman was transferred back to the federal authorities. (HR. 214-15; Arr. 7-12)

Also on January 24, 1997, Bozeman filed a pro se motion to dismiss his indictment in which he asserted as grounds for dismissal violations of Articles IV(e) and V(e) of the Interstate Agreement on Detainers. (C. 8-14) At arraignment, appointed counsel for Bozeman indicated that there were some possible questions about whether the IAD had been properly followed and he requested permission to further investigate and research that issue. (Arr. 4-6) The trial court permitted Bozeman to reserve that issue for post-arraignment consideration because counsel for Bozeman had just been appointed that morning. (Arr. 4-6)

On February 21, 1997, counsel for Bozeman filed Defendant's Motion To Dismiss, requesting that the indictments against Bozeman charging him with the several shooting violations be dismissed. (C. 73-75) As grounds in support of his motion, Bozeman alleged that Article IV(e) of the IAD required dismissal because he had been brought to Covington County to face the shooting charges and he had thereafter been returned to his original place of incarceration prior to being tried on the

shooting charges. On February 25, 1997, Bozeman filed a Memorandum Brief In Support Of Defendant's Motion To Dismiss, again alleging violations of the IAD. (C. 79-85)

On February 27, 1997, Bozeman was again released from federal custody to the custody of Covington County officials, this time for trial on the shooting charges. (HR. 202, 215) Before trial began, in an in-chambers discussion, Bozeman's motions to dismiss on the grounds that the IAD had been violated were discussed. (R. 11-13) The trial court denied the motions at that time, without a hearing, so that trial could proceed, but it reserved to Bozeman the right to put on testimony and evidence in support of his motions after the completion of the trial and specifically reserved to him the right to raise the issue by post-trial motion. (HR. 11-13)

Bozeman's trial proceeded on February 27, 1997, and, on February 28, 1997, the jury convicted Bozeman on all five counts of the indictment. (C. 120-21; R. 192-93) At the conclusion of the trial, the trial court ordered that Bozeman remain in the custody of Covington County officials until the questions raised on the IAD were resolved and until sentencing was completed. (R. 194-96) On March 12, 1997, a hearing was held on Bozeman's motions to dismiss his indictment based on alleged violations of the IAD. (HR. 197-239) On April 25, 1997, Bozeman filed a Renewal Of Defendant's Motion To Dismiss in which he again asserted violations of the IAD. (C. 104-04A) On May 16, 1997, the trial court denied Bozeman's motions to dismiss the indictment in a written order. Appendix at App. 27-29. The trial court found that the only issue before it was whether Article IV of the IAD had been violated. Appendix at App. 27. Finding that the goals of

the IAD had been met and that Bozeman had failed to demonstrate any prejudice, the trial court denied the motions to dismiss. Appendix at App. 28-29.

Bozeman was sentenced on May 21, 1997 to five concurrent ten-year sentences, those sentences to run consecutively to the federal sentence that Bozeman was then serving. Also on May 21, 1997, Bozeman filed a Motion For Judgment Notwithstanding The Verdict Or In The Alternative For New Trial, in which he again asserted violations of the IAD by his failure to be tried on the shooting charges before being returned to the custody of federal officials. (C. 108-09)

B. The Alabama Court Of Criminal Appeals

Bozeman timely appealed to the Alabama Court of Criminal Appeals. Among the issues raised in his brief was the argument that his January 1997 transfer from federal officials to state officials and back to federal officials, without disposing of the pending indictment, violated the Interstate Agreement on Detainers and that his indictment should have, therefore, been dismissed. The Alabama Court of Criminal Appeals rejected Bozeman's argument in a unanimous opinion. The court found, in relevant part, that, while, "[t]echnically, Article IV(e) creates no exception to the requirement that a jurisdiction that acquires a prisoner under the [IAD][3] should try that

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[3] Throughout its opinion, the Alabama Court of Criminal Appeals refers to the Uniform Mandatory Disposition Of Detainers Act, or "UMDDA". The Uniform Mandatory Disposition Of Detainers Act and the Interstate Agreement On

prisoner on pending indictments before returning that prisoner to his original place of imprisonment," "such a rigid interpretation of Article IV(e) serves no purpose in conforming with the intent nor spirit of the [IAD]." *Bozeman v. State*, CR-96-1611, mem. op. at 3 (Ala. May 8, 1998). See Appendix at App. 19. The court "acknowledge[d] that a split exist[ed] among the federal circuits on whether a one-day or more transfer between a sending and receiving jurisdiction without resolution of the receiving jurisdiction['s] pending charges violate[s] the [IAD]," and, based on the goals behind the IAD, it decided "to follow the rationale from those circuits which hold that a brief custody transfer between jurisdictions does not always require a dismissal of the charge with prejudice." *Id.* at 4. (App. 21) Noting that the transfer of Bozeman in this case did not interfere with the purposes of the IAD and that Bozeman had asserted no prejudice from the transfers until his appeal, and even then, only perfunctorily so, the Alabama Court of Criminal Appeals rejected Bozeman's argument and affirmed Bozeman's convictions. *Id.* at 4, 6. (App. 21-22, 26) Bozeman's application for rehearing in that court was denied on June 19, 1998. Appendix at App. 31.

C. The Alabama Supreme Court

Bozeman applied for certiorari in the Alabama Supreme Court, which was granted by that court on

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Detainers Act are one and the same act. For purposes of this petition, the State refers to the Act throughout as the Interstate Agreement On Detainers Act, or the IAD.

February 19, 1999. In his petition for a writ of certiorari, Bozeman's sole issue was his argument that there had been a violation of the Interstate Agreement on Detainers Act requiring dismissal of his indictment. On April 21, 2000, the Alabama Supreme Court, in a per curiam, 5 to 3 decision,[4] reversed Bozeman's convictions, holding that the violation of the IAD required dismissal of Bozeman's indictment. In its opinion, the Alabama Supreme Court first held that, because the United States Supreme Court "had not yet ruled on how the detainer statute should be interpreted," it "was free to select the interpretation it consider[ed] most sound," implying it was not bound by federal law in its construction of the statute. *Ex parte Bozeman*, No. 1971759, at 6 (Ala. Apr. 21, 2000). (App. 6) The court did, however, note that there was a split of authority in the federal circuits and, in deciding the issue, it relied on the law as interpreted by a Pennsylvania federal district court, holding that any violation of the IAD's "anti-shuffling" or "anti-shuttling" provisions required dismissal of the indictment. *Id.* at 6-8. (App. 6-8) In rejecting the State's arguments, the Alabama Supreme Court did not consider the State's argument that Bozeman had not demonstrated any harm from the technical violation of Article IV(e) of the IAD, suggesting that the State was arguing that the brief violation of the Act could simply be ignored. *Id.* at 8. (App. 8) The Court also held that its conclusion was "consistent with the purpose of the Act to protect a prisoner's constitutional right to a

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[4] The ninth justice, Justice Jean Brown, recused herself and did not participate in the decision in this case because she was sitting on the Court of Criminal Appeals at the time that court rendered its decision in this case.

fair and speedy trial," but it in no way explained how the one-day technical violation of the IAD impacted, affected, or even implicated Bozeman's right to a fair or speedy trial. *Id.* at 8. (App. 8) Finally, the court applied state statutory construction law in reaching its decision. *Id.* at 8-9. (App. 9)

Justice See wrote an opinion in dissent, which was joined by Chief Justice Hooper. *Id.* at 10-13. (App. 10-14) In his dissent, Justice See first acknowledged that the Interstate Agreement on Detainers Act was subject to federal construction and the court was, therefore, bound to follow federal precedent in interpreting the IAD. *Id.* at 10. (App. 10-11) He then noted that the Fifth Circuit had already decided the issue in *Sassoon v. Stynchombe*, 654 F.2d 371 (5th Cir. 1981), and that that decision was binding precedent in the Eleventh Circuit, Alabama being a part of the Eleventh Circuit. *Id.* at 10-12. (App. 11-12) Relying on the reasoning in *Sassoon*, and noting that Bozeman had not argued that he was prejudiced by his transfer back to federal custody before his trial, and that the record did not support such a finding, Justice See opined that the State's technical violation of Article IV(e) of the IAD violated no legitimate interest of Bozeman and did not prejudice him in any way. *Id.* at 10-12. (App. 12-13) Justice See concluded: "Despite the State's technical violation of Article IV(e) of the IAD, federal interpretation of the IAD, which this Court is bound to follow, dictates that where the violation does not defeat a legitimate interest of the prisoner and where the violation permits the prisoner to participate in a rehabilitation program, the IAD does not require the dismissal of the charges against the prisoner." *Id.* at 13. (App. 14)

The State filed an application for rehearing emphasizing its arguments that the court was bound by federal law in deciding the issue before it; that the court had decided contrary to the majority of the federal circuits deciding the issue, including the Eleventh Circuit, the State of Alabama being a part of the Eleventh Circuit; that the technical violation of the IAD did not require dismissal of the indictment because the purpose of the Act had not been defeated by the technical violation in this case; and, that the court had erred in failing to apply a harmless error analysis to the issue. The State's rehearing application was denied without comment on June 30, 2000. (App. 30)

REASONS FOR GRANTING THE PETITION

"The Interstate Agreement on Detainers is a compact among 48 States, the District of Columbia, Puerto Rico, the Virgin Islands, and the United States." *Carchman v. Nash*, 473 U.S. 716, 719 (1985). The IAD "is based on a legislative finding that 'charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation." *Id.* at 719-20. "Accordingly, the purpose of the [Act] is 'to encourage the expeditious and orderly disposition of [outstanding] charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints.' " *Id.* at 720. The State of Alabama is a party to the IAD and it has codified the provisions of

the Act. *See*, ALA. CODE §§ 15-9-80 through 88 (1975). See Appendix at 32-47.

Article IV(e) of the IAD provides:

> (e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

In this case, Michael Herman Bozeman was transferred from federal custody to the custody of officials in Covington County, Alabama, for the purposes of arraignment and the appointment of counsel, pursuant to a detainer requested by the Covington County District Attorney. The day after custody was obtained by the officials in Covington County, Bozeman was arraigned and appointed counsel, and his custody was returned to federal officials, without the disposal of the outstanding indictment. This amounted to a technical violation of the IAD. Bozeman, however, never argued that he was prejudiced by this violation of the IAD, there is no evidence in the record to support an allegation of prejudice, the violation did not defeat the purposes behind the IAD, and any violation of the IAD was harmless to Bozeman.

This Court should grant certiorari on the important issue of whether a technical violation of the Interstate Agreement on Detainers Act requires dismissal of an indictment, even when no prejudice to the defendant is demonstrated, because there is a split among the federal courts of appeal on the issue and because there is a

similar split among the highest courts of several of the participating states. Moreover, this Court should grant certiorari to decide the issues raised because the decision of the Alabama Supreme Court is in conflict with prior decisions of this Court on the issues of whether federal law should be applied to the determination of the issue raised and on the issue of the application of harmless error to the violation of a statutory provision. Finally, this Court should grant certiorari to resolve the issue of whether a technical violation of the IAD requires dismissal of an indictment, regardless of any prejudice to the prisoner, because the issue is an important one having a far-reaching impact on criminal prosecutions throughout the states and the federal government.

A. Certiorari Should Be Granted In This Case To Resolve The Split In The Federal Circuits.

Rule 10(a) of the rules of this Court provides that one compelling reason for granting certiorari is if a decision of one federal court of appeals is in conflict with another court of appeals. Sup. Ct. R. 10(a). Over eight years ago, Justice White, dissenting from the denial of certiorari in *Taylor v. United States*, 504 U.S. 991 (1992), noted that there was a conflict in the federal courts of appeal "as to the propriety of dismissal when technical violations of the IAD occur." In *Taylor*, the First Circuit Court of Appeals held that Article IV(e) of the Interstate Agreement on Detainers Act did not compel dismissal of the indictment against the petitioner, who was taken from state custody on a writ of habeas corpus ad prosequendum, or a detainer, for arraignment in federal court on an unrelated crime and returned to state custody the same

day. In his dissent, Justice White urged that review of the issue was mandated, noting:

> One of the Court's duties is to do its best to see that the federal law is not being applied differently in the various circuits around the country. The Court is surely not doing its best when it denies certiorari in this case, which presents an issue on which the Courts of Appeals are recurringly at odds.

This conflict among the various federal circuits still exists today, and the issue, which is squarely presented in this case, requires resolution.[5]

The majority of federal circuits addressing the issue of whether a technical violation of the IAD requires dismissal of the indictment have held that such violations do *not* merit dismissal. *See, United States v. Daniels*, 3 F.3d 25, 27-28 (1st Cir. 1993) ("[A] brief interruption in state prison confinement for purposes of arraignment, where the prisoner is returned to state custody the same day, does not violate the IAD."); *United States v. Roy*, 771 F.2d 54, 60 (2d Cir. 1985) (A one-day interruption of state prison confinement by transfer to federal custody for a

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[5] Recognizing the importance of equal application of the IAD, this Court has granted certiorari in other cases involving the Interstate Agreement on Detainers Act to resolve conflicts in its interpretation and application, *see, e.g., Reed v. Farley*, 512 U.S. 339, 346 (1994); *Cuyler v. Adams*, 449 U.S. 433, 435-36 (1981); *United States v. Mauro*, 436 U.S. 340, 349 (1978), and it should likewise grant certiorari in this case to ensure equal application of the IAD among the participating states and federal government.

motion hearing posed no threat to prisoner's rehabilitation sufficient to constitute a violation of the IAD.), *cert. denied*, 475 U.S. 1110 (1986); *Sassoon v. Stynchombe*, 654 F.2d 371, 375 (5th Cir. 1981) ("A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial is consonant with the intention of the Interstate Agreement on Detainers."); *United States v. Taylor*, 173 F.3d 538 (6th Cir.) (returned to custody the same day, no violation of IAD), *cert. denied*, 120 S. Ct. 448 (1999); *United States v. Roy*, 830 F.2d 628 (7th Cir. 1987) (one-day transfer, no violation of IAD), *cert. denied*, 484 U.S. 1068 (1988); *Baxter v. United States*, 966 F.2d 387, 389 (8th Cir. 1992) (returned to custody the same day, no violation of IAD); *United States v. Johnson*, 953 F.2d 1167 (9th Cir.) (one-day transfer, no violation of IAD), *cert. denied*, 506 U.S. 879 (1992). Other circuits have held to the contrary. *See, e.g., United States v. Thompson*, 562 F.2d 232, 234 (3d Cir. 1977), *cert. denied, sub nom. United States v. Sorrell*, 436 U.S. 949 (1978); *United States v. Schrum*, 638 F.2d 214, 215 (10th Cir. 1981). The decisions of the majority of the federal courts of appeal, holding that a technical violation of the IAD does not require dismissal of the indictment where there is no prejudice to the defendant, is in keeping with the main purposes behind the IAD, is the better reasoned approach to the issue, strikes a better balance between the interests of the states and federal government and the prisoner, and is the approach that should be adopted by this Court. A decision by this Court in accordance with the majority of the decisions on the issue would require a reversal of the Alabama Supreme Court's decision in this case.

B. Certiorari Should Be Granted In This Case To Resolve The Split In The State Supreme Courts.

This Court should also grant the State's petition for a writ of certiorari on the issue raised because there is a conflict among several of the state supreme courts of states that are parties to the Interstate Agreement on Detainers Act. *Compare, Ex parte Bozeman*, No. 1971759, 2000 WL 429936 (Ala. Apr. 21, 2000) (the decision in this case) (Because an untried indictment was pending against Bozeman when he was returned to federal custody, the pending charges should have been dismissed with prejudice pursuant to Article IV(e)), and, *State v. Burrus*, 729 P.2d 935, 937 (Ariz. 1986) ("Considering both the express purpose of the statute and its plain language," dismissal of the indictment would be appropriate for violations of Article IV(e)), with *State v. Sassoon*, 242 S.E.2d 121, 123 (Ga. 1978) ("A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial is consonant with the intention of the Interstate Agreement on Detainers . . . ," and dismissal of the indictment is not required under such circumstances, absent any prejudice to the prisoner.), and *Derring v. State*, 619 S.W.2d 644, 646 (Ark. 1981) (prisoner who was not prejudiced by return to federal prison before state charges were resolved was not entitled to dismissal of the charges). This conflict among the various participating states to the IAD leads to inconsistent and unfair results not intended by the parties to the IAD. For instance, if there is a violation of the IAD by the State of Alabama, whether that violation undermined the purposes behind the IAD or prejudiced the prisoner under indictment in this State, under the decision in this

case, the charges against the prisoner, no matter how serious, must be dismissed, and the prisoner can, in effect, get away with murder. If that same prisoner were facing charges across the border in Georgia, however, and the State of Georgia placed a detainer on him, brought him into the State, but returned him to the sending state without disposing of the pending charges, regardless of whether that technical violation of the IAD undermined the purposes of the IAD or prejudiced the prisoner, the prisoner could still be tried and convicted of his crimes in Georgia. Such unfair and inconsistent results are, in fact, contrary to the purposes of the IAD and should not be permitted to continue. "The IAD's purpose – providing a nationally uniform means of transferring prisoners between jurisdictions – can be effectuated only by nationally uniform interpretation." *Reed v. Farley*, 512 U.S. 339, 348 (1994). This Court should, therefore, grant certiorari and resolve the conflict that exists among the various participating states.

C. This Court Should Grant Certiorari Because The Decision Of The Alabama Supreme Court Is In Conflict With Prior Decisions of This Court.

In its opinion in this case, the Alabama Supreme Court ignored this Court's precedent holding that the Interstate Agreement on Detainers Act is a federal law subject to federal construction, and held that it "was free to select the interpretation it considere[d] most sound" in interpreting the IAD. The Alabama Supreme Court relied on state statutory construction law in reaching its decision and completely ignored applicable federal harmless

error law. For these reasons, this Court should grant certiorari and reverse the decision of that court.

In *Cuyler v. Adams*, 449 U.S. 433 (1981), this Court held that congressional consent transforms an interstate compact within the Compact Clause of the United States Constitution, art. I, § 10, cl. 3, into a law of the United States and that construction of an interstate agreement under the Compact Clause presents a federal question. *Id.* at 438. This Court specifically concluded in *Cuyler* that, because the Interstate Agreement on Detainers Act "was intended to be a grant of consent under the Compact Clause, and because the subject matter of the Act is an appropriate subject for congressional legislation, we conclude that the Detainer Agreement is a congressionally sanctioned interstate compact the interpretation of which presents a federal question." *Id.* at 442 (footnote omitted). The Alabama Supreme Court, in direct contradiction of this holding, held that it was free to interpret the IAD as it chose, because this Court had not specifically addressed the issue raised concerning a technical violation of the IAD, and it proceeded to address the issue using primarily Alabama statutory construction law. In doing so, the Alabama Supreme Court not only ignored this Court's prior decisions concerning the purposes behind and construction of the IAD, it also ignored this Court's decisions on statutory construction, on technical violations of statutes or rules, and on application of the harmless error rule to violations of statutes. *See, e.g., Carchman v. Nash*, 473 U.S. 716, 348 (1985) (purposes behind and construction of IAD); *New York v. Hill*, 120 S. Ct. 659, 666 (2000) (federal law applies to the construction of IAD; technical violation of IAD does not require

dismissal of indictment); *United States v. Mauro*, 436 U.S. 340, 350-51 (1978) (reasons for and purposes behind IAD); *Reed v. Farley*, 512 U.S. 339, 348 (1994) (reasons for and purposes behind IAD; application of harmless error analysis to IAD violation); *Peguero v. United States*, 526 U.S. 23, 27-29 (1999) (application of harmless error analysis to violation of Rule 32(a)(2) of Federal Rules of Criminal Procedure); *United States v. Lane*, 474 U.S. 438, 443-46 (1986) (application of harmless error analysis to violation of Rule 8(b) of Federal Rules of Criminal Procedure); *United States v. Mantalvo-Murillo*, 495 U.S. 711, 716-22 (1990) (application of harmless error analysis to violation of Rule 6 of Federal Rules of Criminal Procedure and 18 U.S.C. §§ 6002, 6003); and, *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255-56 (1988) (application of harmless error analysis to violation of Bail Reform Act of 1984, 18 U.S.C. § 3142(e)).

As the cited cases illustrate, the construction of the IAD is controlled by federal law and it should be constructed to effectuate its purposes, not to defeat them. Moreover, the IAD, as a matter of federal law, is subject to harmless error analysis as demonstrated by the prior decisions of this Court, cited in the previous paragraph, and by the federal harmless error rule. *See* 28 U.S.C. § 2111. As this Court noted in *Bank of Nova Scotia*, "[i]t would be inappropriate to devise a rule permitting federal courts to deal more sternly with nonconstitutional harmless errors than with constitutional errors that are likewise harmless." 487 U.S at 256. Finally, technical violations of the IAD do not require strict compliance with the wording of the statute where there is no harm to the prisoner and the state could suffer great harm by being

required to let a possible criminal go free. *See, e.g., Reed v. Farley*, 512 U.S. 339, 358 (1994) (Scalia, J., concurring in part and concurring in the judgment) ("If there was ever a technical rule, the IAD's 120-day limit is one." Dismissal of the indictment was not required because of the technical violation of this provision.) Because the Alabama Supreme Court's decision in this case was in conflict with all of these principles of the applicable established federal law, this Court should grant the State's petition for certiorari and reverse its decision.

D. This Court Should Grant Certiorari Because The Issue Is An Important One Requiring A Nationally Uniform Interpretation.

"The IAD's purpose – providing a nationally uniform means of transferring prisoners between jurisdictions – can be effectuated only by nationally uniform interpretation." *Reed v. Farley*, 512 U.S. 339, 348 (1994). Because the federal courts of appeal and the states that are parties to the IAD are interpreting the IAD in ways that defeat its stated purposes, the result of which is the serious consequence of the dismissal of criminal charges against possibly guilty violent offenders, this Court should grant certiorari to provide a nationally uniform interpretation of the IAD.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 1999-2000

1971759

Ex parte Michael Herman Bozeman

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(In re: Michael Herman Bozeman a/k/a Sonny Bozeman

v.

State of Alabama)

(Covington Circuit Court, CC-97-16; Court of Criminal Appeals, CR-96-1611)

PER CURIAM.

Michael Herman Bozeman was convicted in the Covington Circuit Court for two counts of discharging a firearm into an occupied dwelling, two counts of discharging a firearm into an unoccupied vehicle, and one count of discharging a firearm into an unoccupied dwelling. Bozeman argued that the State tried him on these charges in violation of art. IV(e) – the "anti-shuttling"

provision – of the Interstate Agreement on Detainers ("IAD"). The trial court rejected Bozeman's argument, and denied his motion to dismiss. The Court of Criminal Appeals, on May 8, 1998, affirmed Bozeman's convictions, by an unpublished memorandum, holding that the State's technical violation of the IAD did not require the dismissal of the charges against Bozeman. *Bozeman v. State* (No. CR-96-1611), 738 So. 2d 934 (Ala. Crim. App. 1998) (table). On certiorari review, we reverse and remand.

Michael Herman Bozeman was arrested on June 15, 1995, on federal charges of intimidating a witness to a shooting incident that had occurred in Opp, Alabama. No other action was ever taken on these charges, but an incident report was filed with the Opp Police Department. On June 16, Bozeman was taken into federal custody on federal drug charges unrelated to the shooting incident. On November 3, Bozeman pleaded guilty to the federal drug charges and was sentenced by the United States District Court for the Middle District of Alabama. Meanwhile, in September 1995, the Grand Jury of Covington County had indicted Bozeman for possession of a controlled substance. On November 8, Bozeman was transferred from federal custody to Covington County to allow the State to pursue the possession charges (case CC-95-350). He was appointed counsel, was arraigned, and was then returned to federal custody. The possession charges (case CC-95-350) were nol-prossed in June 1996. In September 1996, Bozeman was indicted on state charges (case CC-97-16) stemming from the June 1995 shooting incident.

Following the indictment on the state shooting charges, Covington County placed a detainer on Bozeman, and he was again transferred from federal custody to Covington County on January 23, 1997. Counsel was appointed for Bozeman, and he was arraigned on the state shooting charges.[1] On January 24, Bozeman was transferred back to federal custody; that transfer prompted his counsel to file a motion to dismiss, claiming that the transfer violated the IAD.[2] In February, the shooting case (case CC-97-16) went to trial in the Covington Circuit Court, and a jury returned a guilty verdict on each of the five counts relating to the shooting. The trial court held a posttrial hearing to consider Bozeman's motion to dismiss the indictment pursuant to the

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[1] The trial court granted Bozeman's newly appointed counsel leave to raise any issues that would normally be addressed before an arraignment.

[2] The IAD, also known as the Uniform Mandatory Disposition of Detainers Act ("UMDDA"), is codified in Ala. Code 1975, § 15-9-81. The IAD is a contract among the states, the United States, and the District of Columbia.

> "The [IAD] attempts to remedy the disadvantages and hardships imposed upon prisoners attendant to the use of detainers and to eliminate potential abuses of the detainer system. . . . The [IAD] provides the prisoner with a method of clearing detainers lodged against him. It further provides cooperative proceedings for temporary transfers of prisoners for purposes of trial on outstanding charges among the participating jurisdictions to aid such disposition."

Gillard v. State, 486 So. 2d 1323, 1325 (Ala. Crim. App. 1986) (citing *United States v. Dixon*, 592 F.2d 329 (6th Cir.), cert. denied, 441 U.S. 951 (1979)).

IAD. On May 16, the trial court denied Bozeman's motion to dismiss, and on May 21 it denied his subsequent motion for a new trial. Bozeman appealed, and the Court of Criminal Appeals affirmed. This Court granted Bozeman's petition for the writ of certiorari to consider whether a technical violation of the IAD warranted the dismissal of the state shooting charges against Bozeman (case CC-97-16).[3]

Bozeman argues that under the plain meaning of the IAD, his transfers in November 1995 and January 1997 both required the dismissal of the shooting charges with prejudice. Article IV of the IAD, which was codified at § 15-9-81, provides:

> "(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated. . . .
>
> ". . . .
>
> "(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information or

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[3] As we discuss later, a "technical violation" of the IAD is one that does not defeat a legitimate interest of the prisoner, for example, an interest in receiving rehabilitation services.

> complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."[4]

Bozeman argues that because he was transferred from federal custody to state custody to allow the State to pursue the possession case (case CC-95-350) and back to federal custody in November 1995, without being prosecuted in the shooting case (case CC-97-16), the charges in that case should be dismissed with prejudice on the basis that a prosecution on those charges would violate the IAD. However, at the time of Bozeman's November 1995 transfer, nothing more than an incident report had been filed with respect to the shooting charges. Thus, because no indictment, information,[5] or complaint had been filed with respect to the shooting case at the time of the November 1995 transfer, under the IAD the November 1995 transfer does not require the dismissal of the shooting charges.

Bozeman also argues that because he was transferred back to federal custody after his January 1997 transfer to state custody for arraignment in the shooting case (case CC-97-16) without being prosecuted in that case, the charges stated in the shooting case should have been dismissed with prejudice as violating the IAD. The Court

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[4] Article V(e) requires that the prisoner be returned to the sending state "[a]t the earliest practicable time consonant with the purposes of [the IAD]."

[5] "An information is a written statement charging the defendant or defendants named therein with the commission of an indictable offense, made on oath, signed, and presented to the court by the district attorney, pursuant to Rule 2.2(e), without action by the grand jury." Rule 13.1(b), Ala. R. Crim. P.

of Criminal Appeals affirmed the trial court's refusal to dismiss, stating in its unpublished memorandum that, despite a technical violation of the IAD, the statute should not be interpreted so narrowly as to defeat its purpose.

The State does not dispute that a technical violation of the IAD occurred and does not argue that Bozeman's recitation of this Court's rules of statutory construction is incorrect. Instead, the State asserts that the IAD is federal law that is subject to federal construction. The State cites an opinion of the Supreme Court of the United States stating that "[t]he [IAD] is a congressionally sanctioned interstate compact within the Compact Clause, U.S. Const., Art. I, § 10, cl. 3, and thus is a federal law subject to federal construction." *Carchman v. Nash*, 473 U.S. 716, 719 (1985). Moreover, the Supreme Court has held that "because the [IAD] is an interstate compact approved by Congress . . . [it] is . . . a federal law subject to federal rather than state construction." *Cuyler v. Adams*, 449 U.S. 433, 438 (1981). *See, also, New York v. Hill*, ___ U.S. ___, 120 S. Ct. 659 (2000). If the United States Supreme Court had already ruled on this issue, or if all federal circuits were in agreement on this issue, we would accept the State's view. However, because the United States Supreme Court has not ruled on how the detainer statute should be interpreted, and in light of the split of authority among the courts of appeals for the various federal circuits, this Court is free to select the interpretation it considers most sound. See *Hagler v. Ford Motor Credit Co.*, 381 So. 2d 80, 82 (Ala. Civ. App. 1980) (where federal courts are split on an issue and the United States Supreme Court is silent on

that issue, state courts may select the view they consider the more logical one).

The conflict between the circuits was recognized by Justice White in his dissent from the order denying certiorari review in *Taylor v. United States*, 504 U.S. 991 (1992). In a plea to the Court to settle this dispute among the circuits, Justice White stated:

> "The Courts of Appeals are divided as to the propriety of dismissal when technical violations of the IAD occur. Some courts take the First Circuit's view that such violations do not merit dismissal, see, *e.g.*, *United States v. Roy*, 830 F.2d 628, 636 (CA 7 1987), cert. denied, 484 U.S. 1068 (1988); *United States v. Roy*, 771 F.2d 54, 60 (CA 2 1985), cert. denied, 475 U.S. 1110 (1986); *Sassoon v. Stynchombe*, 654 F.2d 371, 374-375 (CA 5 Unit B. Aug. 1981); but others do not, see, *e.g.*, *United States v. Thompson*, 562 F.2d 232, 234 (CA 3 1977) (en banc), cert. denied, 436 U.S. 949 (1978); *United States v. Schrum*, 638 F.2d 214 (CA 10 1981), aff'g 504 F. Supp. 23 ([D.] Kan. 1980)."

504 U.S. at 991.

We find persuasive the rationale set forth by the United States District Court for the Eastern District of Pennsylvania in *United States v. Sorrell*, 413 F. Supp. 138 (E.D. Pa. 1976), *aff'd*, 562 F.2d 227 (3d Cir. 1977), *cert. denied*, 436 U.S. 949 (1978). The district court, interpreting the same provision of the IAD, stated:

> "Admittedly, there may be minimal interruption of the rehabilitative process by a one day trip from Graterford and return. However, Congress was not dealing with an individual situation, but rather with an agreement of national scope.

> Suppose the defendant had been imprisoned in Erie, and not Graterford. The interruption there would be far more serious than here. If the defendant were confined on a state charge in Amarillo, Texas and had to be transferred for an indictment pending in Brownsville, Texas, a distance of approximately 700 miles, the disruption there would be far from minimal and could seriously interfere with one of the purposes of the Agreement. Again, *Congress could have written limitations into the Agreement. Again, it did not. And again, it is not for us to legislate.*"

413 F. Supp. at 141. (Emphasis added.) Likewise, the Alabama Legislature could have stepped beyond the confines of the text of the compact and included limitations in the statute expressly allowing "technical" violations to occur. However, it, like Congress, did not do so. This Court will not interject its interpretation of what the Legislature should have done.

The IAD is not ambiguous. It would require a tortured reading of the statute for us to conclude, as the State suggests, that a brief violation of the IAD can be ignored. Our conclusion in this regard is consistent with the purpose of the Act to protect a prisoner's constitutional right to a fair and speedy trial. We recognize that some federal courts have ignored the plain meaning of the IAD,[6] but, for the reasons cited above, we are under no obligation to follow the interpretation applied by those courts.

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[6] See, e.g., *Sassoon v. Stynchombe*, 654 F.2d 371 (5th Cir. 1981).

Bozeman argues correctly that the Court of Criminal Appeals' decision violated a fundamental rule of statutory construction as stated by this Court in *IMED Corp. v. Systems Engineering Associates Corp.*, 602 So. 2d 344 (Ala. 1992):

> "The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."

Id. at 346 (citing *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687 (Ala. 1991)).

Bozeman was indicted on the state shooting charges on September 20, 1996; therefore an "untried indictment" was pending against Bozeman when he was returned to state authorities on January 15, 1997. He was returned to federal authorities without being tried by the State for the offenses of which he was subsequently convicted. Therefore, in accordance with the plain language of § 15-9-81 (art. IV(e) of the IAD),[7] the shooting charges against

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[7] "If trial is not had on any indictment . . . prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment . . . shall not be of any further force or effect, and the court shall enter an order

Bozeman should have been dismissed with prejudice. The trial court erred by denying Bozeman's motion to dismiss, and the Court of Criminal Appeals erred by affirming his convictions. The judgment of the Court of Criminal Appeals is reversed and the case is remanded.

REVERSED AND REMANDED.

Houston, Cook, Lyons, Johnstone, and England, JJ., concur.

Hooper, C.J., and Maddox and See, JJ., dissent.

Brown, J., recuses herself.*

*Justice Brown was a member of the Court of Criminal Appeals when that court considered this case.

SEE, Justice (dissenting).

I dissent from the reversal of the judgment of the Court of Criminal Appeals that affirmed Bozeman's convictions. I do not believe the State's technical violation of the IAD required the dismissal of the charges against Bozeman.

The Supreme Court of the United States has stated that "[t]he [IAD] is a congressionally sanctioned interstate compact within the Compact Clause, U.S. Const., Art. I, § 10, cl. 3, and thus is a federal law subject to federal construction." *Carchman v. Nash*, 473 U.S. 716, 719 (1985); see *Cuyler v. Adams*, 449 U.S. 433, 438 (1981) ("[B]ecause the [IAD] is an interstate compact approved by Congress . . . [it] is . . . a federal law subject to federal

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dismissing the same with prejudice." Ala. Code 1975, § 15-9-81 (Art. IV(e) if [sic] the IAD).

rather than state construction."); *Reed v. Farley*, 512 U.S. 339, 347 (1994) (recognizing that " 'congressional consent transforms an interstate compact . . . into a law of the United States' " (quoting *Cuyler v. Adams*, 449 U.S. at 438)). Thus, this Court is bound to follow federal precedent interpreting the IAD.

In *Sassoon v. Stynchombe*, 654 F.2d 371 (5th Cir. 1981),[8] the former Fifth Circuit considered whether a technical violation of Article IV(e) of the IAD required habeas corpus relief from the federal prisoner's conviction of state charges in Georgia. The federal prisoner was transferred to a state jail for five days, was arraigned on state charges, and was returned to the federal prison, without Georgia's having resolved the pending charges against him. He was later transferred back to state facilities, was tried, and was convicted of the state charges. The former Fifth Circuit recognized that Article IV(e) of the IAD had in fact been violated when the prisoner was transferred back to the federal prison without a resolution of the pending state charges, but it stated that the prisoner's "release [was] not justified where no 'legitimate interest' of the prisoner [was] defeated by the violation." *Id.* at 374. The court noted that " 'a primary purpose of the [IAD] is to protect prisoners against whom detainers are

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[8] *Sassoon* was decided on August 28, 1981. See 654 F.2d 371. In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981), the United States Court of Appeals for the Eleventh Circuit held that "the decisions of the United States Court of Appeals for the Fifth Circuit . . . as that court existed on September 30, 1981, handed down by that court prior to the close of business on that date, shall be binding as precedent in the Eleventh Circuit." Thus, *Sassoon* is binding precedent in this case.

outstanding[,]' . . . [and that] [n]o protection is necessary where no injury is threatened." *Sassoon*, 654 F.2d at 374 (quoting *Cuyler*, 449 U.S. at 449). The court denied the writ of habeas corpus, stating:

> " 'This court declines to apply [Article IV(e) of the IAD] mechanically contrary to the stated purposes of the [IAD] because such an application would be based upon a construction of the [IAD] against, rather than in behalf of, the legitimate interest of Sassoon in receiving rehabilitative education while in federal custody. On the facts of the present case, Clayton County's keeping Sassoon for trial, rather than returning him immediately after arraignment, would have interfered with Sassoon's legitimate interest in participating in the program of rehabilitation in which he was enrolled. A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial [are] consonant with the intention of the [IAD].' "

Id. at 375 (quoting *State v. Sassoon*, 240 Ga. 745, 749, 242 S.E.2d 121, 123 (1978)).

Bozeman was transferred in January 1997 from a federal penitentiary to state custody for one day. He was arraigned on the state shooting charges (case CC-97-16) and was returned to the federal penitentiary until his trial. Although Bozeman asserts that no evidence in the record indicates that his transfer back to the federal penitentiary enabled him to participate in any rehabilitation program, the record shows that he acknowledged the existence of such rehabilitation before the trial court denied his motion to dismiss. *Renewal of Defendant's*

Motion to Dismiss at 2. Bozeman does not argue on appeal that he was prejudiced by the transfer back to federal custody before his trial.[9] Accordingly, because Bozeman was not prejudiced by the State's technical violation of the IAD and because the violation permitted Bozeman to participate in federal rehabilitation programs, "no 'legitimate interest' of [Bozeman] [was] defeated by the violation [of Article IV(e) of the IAD]." *Sassoon*, 654 F.2d at 374. Therefore, based on the reasoning of the former Fifth Circuit in *Sassoon*, 654 F.2d 371, I conclude that the Court of Criminal Appeals properly affirmed the trial court's denial of Bozeman's motion to dismiss.[10]

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[9] After Bozeman's motion to dismiss was denied, he did assert in a motion to the trial court that "the State's violation of the [IAD] prevented [him] from having adequate opportunity to consult with his Court-appointed attorney prior to the trial of [his] case." *Motion for Judgment Notwithstanding the Verdict or in the Alternative for New Trial* at 1. However, the record contains no evidence to support this assertion.

[10] This conclusion is in accord with a majority of federal circuits that have addressed this issue. See *United States v. Taylor*, 173 F.3d 538, 541-42 (6th Cir. 1999) ("Numerous circuit courts have held that such quick, temporary transfers do not violate the IAD. See *Taylor v. United States*, 504 U.S. 991, 112 S.Ct. 2982, 119 L.Ed.2d 599 (1992) (White, J., dissenting from denial of certiorari) (listing cases from [the] First, Second, Fifth (Unit B 1981), Seventh, and Ninth Circuits)."); *United States v. Daniels*, 3 F.3d 25, 27 (1st Cir. 1993) ("[W]e have held – as have several other circuits – that a brief interruption in state prison confinement for purposes of arraignment, where the prisoner is returned to state custody the same day, does not violate the IAD.") (listing cases from the First, Second, Seventh, Eighth, and Ninth Circuits).

Despite the State's technical violation of Article IV(e) of the IAD, federal interpretation of the IAD, which this Court is bound to follow, dictates that where the violation does not defeat a legitimate interest of the prisoner and where the violation permits the prisoner to participate in a rehabilitation program, the IAD does not require the dismissal of the charges against the prisoner. Accordingly, the trial court properly denied Bozeman's motion to dismiss.

HOOPER, C.J., concurs.

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MEMORANDUM

CR-96-1611 Covington Circuit Court No. 97-16

Michael Herman Bozeman aka Sonny Bozeman v. State

Affirmed by memorandum. Michael Herman Bozeman has challenged on direct appeal his convictions in the Circuit Court of Covington County for two counts of discharging a firearm into an occupied dwelling, two counts of discharging a firearm into an unoccupied vehicle, and one count of discharging a firearm into an unoccupied dwelling. The charges are contained in circuit court case number CC-97-16. Bozeman contends that the State of Alabama obtained these convictions in violation of Article IV(e) – the "anti-shuffling" provision – of the Uniform Mandatory Disposition of Detainers Act,[1] (UMDDA). That article provides:

> "If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original

[1] Sections 15-9-80 through 15-9-88, Ala.Code 1975.

> place of imprisonment pursuant to Article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."

§ 15-9-81, Art, IV(e), Ala.Code 1975. Concerning case CC-97-16, Bozeman contends that the State of Alabama violated Article IV(e) on two occasions. First, when the State obtained temporary custody of him from federal authorities to pursue charges in state case CC-95-350 and then returned him to federal custody without pursuing and completing case CC-97-16. Bozeman contends that the State of Alabama violated Article IV(e) a second time when it again obtained temporary custody over him from federal authorities for arraignment in case CC-97-17 and again returned him to federal custody prior to completing that case. Therefore, according to Bozeman, either reason alleged above requires that case CC-96-17 be dismissed with prejudice due to the violation of Article IV(e).

Bozeman has raised two issues on appeal challenging his convictions after a violation of Article IV of the UMDDA.

I.

Bozeman contends that the charges giving rise to the detainer filed in case CC-97-16 were "charges outstanding against a prisoner," § 15-9-81, Article I, UMDDA, when in November 1995, he was first transferred from federal custody to state custody regarding case CC-95-350. Therefore, according to Bozeman, he should have been put to trial on CC-97-16 before his return to federal authority

pursuant to the mandatory procedure stated in Article IV of the UMDDA. Bozeman contends that the charges contained in CC-97-16 are due to be dismissed with prejudice because he was not tried in that case before his return to federal custody. We find no merit to this argument because at the time of the November 1995 transfer in case CC-95-350, Bozeman had not been "charged" with any crime that later constituted case CC-97-16.

The District Attorney testified that only an incident report concerning the crimes in case CC-97-16 had been filed before Bozeman's transfer in CC-95-350. According [sic] the District Attorney, the Opp Police Department "had just forgotten about [CC-97-16] in light of the federal charges." R. 207. After being contacted by a victim who wanted the case pursued, the district attorney's office presented the case to the September 1996 grand jury. It is not sufficient that the authorities knew that an arrest was imminent or that an indictment would possibly be returned on the conduct underlying CC-97-16. This court in *Morrow v. State*, 675 So. 2d 89, 90 (Ala.Cr.App. 1995) held that "Article I clearly states that it pertains to 'untried indictments.' " (emphasis added).

II.

Bozeman contends that his return to federal custody after his January 1997 transfer to state custody for arraignment in case CC-97-16 was a clear violation of the UMDDA. On October 10, 1996, the District Attorney for Covington County mailed a letter to federal authorities at the Atlanta, Georgia federal prison where Bozeman was an inmate. This letter requested that a detainer be placed

on Bozeman for the outstanding charges contained in case CC-97-16. C.R. 180, R. 212. This letter also requested that Bozeman be made available for his upcoming arraignment on these charges and requested all necessary forms be mailed to the District Attorney for completion and return [sic] to the proper federal authorities in sufficient time before arraignment for the State to obtain Bozeman. The federal authorities in Atlanta responded stating that a detainer had been filed on Bozeman pursuant to the District Attorney's October 29, 1996 request. The record contains a notice to Bozeman of untried indictments and right to request disposition of the charges in case CC-97-17 [sic] pursuant to Article III of the UMDDA. Bozeman acknowledged receipt of this notice on November 4, 1996. C.R. 75.

After being advised by federal authorities in Atlanta that a detainer had been filed on Bozeman, the District Attorney was notified that Bozeman had been transferred to a federal prison in Marianna, Florida. On January 8, 1997 the District Attorney sent a letter and temporary custody form to federal prison authorities in Marianna, Florida. The letter and the form stated that Bozeman was needed for arraignment and appointment of counsel in case CC-97-16 and stated that Bozeman would be picked up on January 15 and returned to federal authorities on January 16, 1997. C.R. 179, 181. After arraignment and appointment of counsel in case CC-97-16 Bozeman was returned to federal authorities. He was returned to State authorities in February 1997 to stand trial on the charges contained in CC-97-16. Therefore, according to Bozeman, case CC-97-16 should be dismissed because these charges

which were pending against him in the receiving jurisdiction (the State of Alabama) were not tried before his return to "the original place of imprisonment" as provided in Article IV(e) of the UMDDA.

Technically, Article IV(e) creates no exception to the requirement that a jurisdiction that acquires a prisoner under the UMDDA should try that prisoner on pending indictments before returning that prisoner to his original place of imprisonment. See, Leslie W. Abramson, *The Interstate Agreement on Detainers: Narrowing its Availability and Application*, 21 New England Journal on Criminal and Civil Confinement 1, 38 (1995). However, such a rigid interpretation of Article IV(e) serves no purpose in conforming with the intent nor spirit of the UMDDA. Article I of the UMDDA outlines the purposes of the agreement as follows.

> "The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be

had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures."

§ 15-9-81, Ala.Code 1975.

One commentator elaborated on the purposes of the UMDDA as follows.

"The Interstate Agreement on Detainers has two purposes. In addition to the administrative goal of creating a more efficient and uniform system of interjurisdictional rendition, the Agreement seeks to alleviate the abuses often suffered by prisoners against whom detainers were lodged. It represents a statutory grant of rights not fully protected by the due process and speedy trial provisions of the Constitution.

"Prior to the Agreement's development, a prisoner had neither the means to learn of the lodging of a detainer nor the concomitant right to effect the speedy disposition of the out-of-state charges underlying the detainer. The consequences of this impotence, critics observed, were both serious and indefensible. When a state informed prison officials of the possibility of a future demand for the rendition of a prisoner, his status within the prison system was often profoundly affected. Such a prisoner might be treated as an escape risk, or be denied trusty status and other significant institutional privileges. The mere awareness that a detainer had been lodged could have a 'corrosive' effect on a prisoner's attitude and diminish the likelihood of his taking advantage of whatever rehabilitative opportunities existed at the institution in which he was incarcerated. A filed detainer could affect the length as well as the terms of

> confinement by limiting the prospects for executive clemency and even reducing the likelihood of parole. Absent the power to expedite the prosecution of out-of-state charges, the prisoner often lost the possibility that the second sentence, if imposed at all, might run concurrently with the first.
>
> "The authors of the IAD sought to eliminate the needlessly punitive, arbitrary, and sometimes vindictive elements of the prior detainer system by affording the prisoner the right to demand and receive a speedy trial on any charges underlying a filed detainer. Like those of the Speedy Trial Act, the concrete guarantees of the IAD go well beyond the rather amorphous and easily defeated constitutional right to a speedy trial as it has been construed by the federal courts."

Federal Habeas Corpus Review of Nonconstitutional Errors: The Cognizability of Violations of the Interstate Agreement on Detainers, Columbia Law Review, Vol. 83, No. 4, 975, 977-980 (May 1983).

We acknowledge that a split exists among the federal circuits on whether a one-day or more transfer between a sending and receiving jurisdiction without resolution of the receiving jurisdictions pending charges violate [sic] the UMDDA. However, because paragraph 1 of Article IX of the UMDDA states that "[t]his agreement shall be liberally construed so as to effectuate its purposes," we choose to follow the rationale from those circuits which hold that a brief custody transfer between jurisdictions does not always require a dismissal of the charge with prejudice. We so hold because these transfers do not interfere with the purpose of the act. Moreover, there was

no assertion, until appeal, that Bozeman suffered any prejudice from the transfers.[2]

As persuasive authority for our position we cite to the following cases. In *State v. Sassoon*, 240 Ga. 745, 242 S.E.2d 121 (1978) Sasson relied alone upon the explicit language of the Georgia Statute enacting the Interstate Agreement on Detainers Act[3] stating: "if trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof [§ 77-506b] such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice." *Sassoon*, 240 Ga. at 748, 242 S.E.2d at 123. This language from the Georgia statute is identical to Alabama's statute. The Supreme Court of Georgia concluded the following.

> "A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial is consonant with the intention of the Interstate Agreement on Detainers."

State v. Sassoon, 240 Ga. at 749, 242 S.E.2d at 123.

---

[2] On appeal Bozeman made a conclusory assertion that his transfers interfered with his ability to aid in his defense. We acknowledge that jurisdictions differ on the necessity of requiring proof of prejudice under Article IV(e). We do not have to resolve this at this time because Art. IV(e) was not violated in this case.

[3] Ga.Code Ann. § 77-505b(e).

Ultimately Sassoon's case reached the Fifth Circuit Court of Appeals where the federal court quoted the Georgia Supreme Court's opinions stating:

> " 'This court declines to apply (Article IV(e)) mechanically contrary to the stated purposes of the Interstate Agreement on Detainers because such an application would be based upon a construction of the Agreement against, rather than in behalf of, the legitimate interest of Sassoon in receiving rehabilitative education while in federal custody. On the facts of the present case, Clayton County's [Ga.] keeping Sassoon for trial, rather than returning him immediately after arraignment, would have interfered with Sassoon's legitimate interest in participating in the program of rehabilitation in which he was enrolled. A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial is consonant with the intention of the Interstate Agreement on Detainers. . . . '
>
> "240 Ga. at 749, 242 S.E.2d 121."

Sassoon v. Stynchombe, 654 F.2d 371, 375 (5th Cir. 1981).

Likewise in *United States v. Taylor*, 947 F.2d 1002 (1st Cir. 1991) the defendant filed a pro se motion to dismiss the federal indictment because the anti-shuffling provision of the interstate agreement on detainers had been violated when he was taken from Massachusetts custody in its state prison to the District Court for the District of Massachusetts on a writ of habeas corpus ad prosequendum for arraignment for an unrelated crime and returned

to state custody the same day.[4] The *Taylor* court ruled as follows.

> "Strictly, in literal accordance with the statutory language, defendant was correct. Our question is whether common sense rejects that literal application. We so hold. The test is the underlying purpose of the Act. *United States v. Mauro*, 436 U.S. 340, 349, 98 S.Ct. 1834, 1841-42, 56 L.Ed.2d 329 (1978).
>
> " . . . [S]o brief an interruption was no threat to his rehabilitation, the main purpose of the Act, and that there could be advantages to a prisoner in not delaying a federal arraignment. Inherent in our decision, . . . [is] that the prisoner's return the same day was to the same institution from which he had been sent. We take this circumstance to be essential to our ruling.

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[4] We have discerned from the record in Bozeman's case that confusion may have existed between a writ of habeas corpus ad prosequendum and lodging a detainer. A writ of habeas corpus ad prosequendum is not a detainer for purposes of the UMDDA.

> "A 'detainer' is an informal ' " 'notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction. . . . A writ of habeas corpus ad prosequendum, on the other hand, 'is an order by a court directing authorities to produce a prisoner to face criminal charges' and is not considered a detainer, regardless of whether it is issued by a state or by a federal court."

People v. Wilden, 197 Mich.App. 533, 538, 496 N.W.2d 801, 804 (1992). If confusion existed, it has no bearing on the resolution of this particular case.

> " . . . What we rely on is the single day interruption of the state confinement, and the manifest lack of injury."

United States v. Taylor, 947 F.2d at 1003, 1004; *United States v. Danials*, 3 F.3d 25, 27 (1st Cir. 1993) ("Strictly speaking, the argument is not without merit. In this circuit, however, we have firmly held that "common sense rejects that literal application."); *United States v. Johnson*, 953 F.2d 1167, 1171 (9th Cir. 1992) (Johnson claimed his indictment should be dismissed because the United States violated the anti-shuttling provision of the Interstate Agreement on Detainers Act by moving him from state to federal custody and back on *five* occasions before he was tried on the federal indictment. The *Johnson* court held: "[I]n the absence of any evidence that the one-day transfers interfered with [the defendant's] participation in any rehabilitative program, or that he was denied, threatened with the denial of, or feared losing any privileges because of the pending federal charges. The transfers involved in this case appear to be wholly consistent with the goal of the Interstate Detainers Act to expedite the prosecution of federal charges without interfering with the state's rehabilitative programs."); *United States v. Chico*, 558 F.2d 1047, 1049 (2nd Cir. 1977) (" . . . Article IV(e) of the Act does not apply to a case where a prisoner is removed from the prison of a state for a few hours to be arraigned, plead and be sentenced in the federal court without ever being held at any place of imprisonment other than that of the sending state and without interruption of his rehabilitation there."); *Baxter v. United States*, 966 F.2d 387, 389 (8th Cir. 1992) (removal from state custody for few hours for arraignment and plea does not violate IAD); *United*

States v. Roy, 830 F.2d 628, 636 (7th Cir. 1987) (overnight removal did not violate IAD).

Based on the record in this case, we find that Bozeman's brief transfer in January 1997 for arraignment in case CC-97-16 and return to federal custody the following day did not violate Article IV(e) of the UMDDA. The trial court correctly denied his motion to dismiss.

All the Judges Concur.

IN THE CIRCUIT COURT OF COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,	*	
PLAINTIFF,	*	
VS.	*	**CASE NO.**
MICHAEL HERMAN BOZEMAN,	*	**CC-97-16**
DEFENDANT.	*	

ORDER

(Filed May 16, 1997)

I have now heard defendant's claim that this prosecution should be dismissed on account of alleged violation of the Interstate Agreement on Detainers Act (hereinafter "IAD"), and therefore proceed to rule upon that particular issue, as explained below.

At the IAD hearing defense counsel set forth his position as follows: "Our claim is not based on violation of Article III [of the IAD]. Rather, our contention is that the District Attorney has violated Article IV." That being the contention before me, I limit my inquiry as to whether or not there has been an Article IV violation mandating dismissal of this case.

The facts show that defendant was transported from federal authorities to Covington County, Alabama, twice before trial. The first time, he was both brought here and returned on or about November 8, 1995, in connection with another charge. There were no formal proceedings pending related to CC-97-16 at that juncture.

After indictment in CC-97-16 defendant was brought to Covington County a second time. He arrived January 23, 1997, whereupon he was both arraigned and returned to the federal prison at Marianna, Florida, the next day. Thus, defendant was kept about 24 hours before being sent back.

It seems to me that defendant was brought to Covington County on both the above mentioned occasions to attend to short pre-trial matters, not anticipated to require his extended presence. It made much sense to bring him into the county briefly to see to those matters, and thereupon return him to the surroundings to which he was accustomed. That course appears to have been conservative of *defendant's* interest in maintaining any course of rehabilitation available to him in federal prison. He certainly would not receive much rehabilitation in a county jail.

Furthermore, my experience indicates that when a federal prisoner is needed for a minor proceeding in state court, it is often difficult to acquire his person indefinitely without encountering substantial reluctance from federal authorities. Also, many prison inmates don't care to stay in our county jail for two or three months pending trial.

To paraphrase another court, at the hearing of this matter there was a failure of proof that the short transfers to Covington County interfered with defendant's participation in any rehabilitative program, or that he was denied, threatened with the denial of, or feared losing any privileges because of this state charge, and no dismissal is appropriate. The transfers involved in this case

appear to be wholly consistent with the goal of the IAD to expedite the prosecution of state charges without interfering with any rehabilitative programs of the federal government. *United States v. Johnson*, 953 F.2d 1167 (9th Cir. 1992). *See also United States v. Roy*, 830 F.2d 628 (7th Cir. 1987) and *State v. Sassoon*, 242 S.E.2d 121 (Ga. 1978).

Gillard v. State, 486 So.2d 1323 (Ala. Crim. App. 1986) and *State v. Hill*, 638 So.2d 1376 (Ala. Crim. App. 1993) are both easily distinguishable from the facts before me. In both those cases the prisoner was held by the receiving state an inordinate amount of time before return to the sending state. Attempts that followed to reassert custody by the receiving state were thus clearly in contravention of the inmates' interest.

Defendant, however, also asserts that he has not been returned to federal authorities since trial at the earliest practicable time consonant with the purposes of the IAD. On the contrary, in view of defendant's tendency to claim that every transfer to federal authorities violates the IAD, it has not been practicable to return him before this ruling. Further, the ruling is made at the first opportunity the work load of the undersigned would permit. Defendant's contention is meritless.

In consequence of all the foregoing the request to have this case dismissed under the IAD is DENIED. Judgment and sentencing are now rescheduled for the 21st day of May, 1997, at 4:30 o'clock p.m.

DONE and ORDERED this 16th day of May, 1997.

/s/ M. Ashley McKathan
M. ASHLEY McKATHAN
CIRCUIT JUDGE

IN THE SUPREME COURT OF ALABAMA
June 30, 2000

1971759

Ex parte Michael Herman Bozeman. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Michael Herman Bozeman aka Sonny Bozeman v. State) (Covington Cir.Ct.No.: CC-97-16) (Low'r.App.Ct.No.: 96-1611)

ORDER

IT IS ORDERED that the application for rehearing filed in the above cause on April 14, 2000, be, and the same is hereby, overruled. NO OPINION.

PER CURIAM – Houston, Cook, Lyons, Johnstone, and England, JJ., concur; Hooper, C.J., and Maddox and See, JJ., dissent; Brown, J., recuses herself.* (*Justice Brown was a member of the Court of Criminal Appeals when that court considered this case.)

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
JUDICIAL BUILDING, 300 DEXTER AVENUE
P.O. BOX 301555
MONTGOMERY, AL 36130-1555

FRANCIS ALLEN LONG, SR.
Presiding Judge
H. WARD McMILLAN
SUE BELL COBB
PAMELA W. BASCHAB
JAMES H. FRY
Judges

Lane W. Mann
Clerk
Wanda K. Ivey
Assistant Clerk
(334) 242-4590
FAX (334) 242-4689

Hon. Roger A. Powell, Circuit Clerk
Hon. Mark John Christensen, Attorney

RE: CR-96-1611
Michael Herman Bozeman v. State of Alabama
(Appeal from Covington Circuit Court: CC97-16)

Dear Sir or Madam:

You are hereby notified that on June 19th, 1998 the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for rehearing overruled. 39(k) Motion Denied.

Lane W. Mann
Clerk
Court of Criminal Appeals

LWM/wki

CODE OF ALABAMA 1975

ARTICLE 3.

MANDATORY DISPOSITION OF DETAINERS.

§ 15-9-80. Short title.

This article may be cited as the Uniform Mandatory Disposition of Detainers Act. (Acts 1978, No. 590, p. 693, § 2.)

§ 15-9-81. Adoption and text of agreement on detainers.

The agreement on detainers is hereby enacted into law and entered into by the State of Alabama with any and all jurisdictions legally joining therein, in the form substantially as follows:

AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

Article I.

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this

agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II.

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III or article IV hereof.

Article III.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party

state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided, that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decision of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the

indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner

to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided, that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further, that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment

pursuant to article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V.

(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody this prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on

the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the

law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state, and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI.

(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of

this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article VII.

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII.

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX.

1. This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the Constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

2. The phrase "appropriate court," as used in the agreement on detainers, shall, with reference to the courts of this state, mean any court with criminal jurisdiction.

3. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes.

4. Escape from custody while in another state pursuant to the agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the

agreement on detainers, and shall be punishable in the same manner as an escape from said institution.

5. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

6. The Governor is hereby authorized and empowered to designate an administrator who shall perform the duties and functions and exercise the powers conferred upon such person by article VII of the agreement on detainers.

7. In order to implement article IV(a) of the agreement on detainers, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request, notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor within 30 days and to contest the legality of his delivery. (Acts 1978, No. 590, p. 698, § 1.)

§ 15-9-82. Right of prisoner to final disposition of untried indictments, etc., pending against him; duty of official having custody of prisoners to inform prisoners of untried indictments, etc.; failure to notify prisoners of filing of detainers.

(a) Any person who is imprisoned in a penal or correctional institution of this state may request final disposition of any untried indictment, information or complaint pending against him in this state. The request shall be in writing addressed to the court in which the indictment, information or complaint is pending and to the district attorney charged with the duty of prosecuting it, and shall set forth the place of imprisonment.

(b) The warden or other like official having custody of prisoners shall promptly inform each prisoner in writing of the source and nature of any untried indictment, information or complaint against him of which the warden or other like official had knowledge or notice, and of his right to make a request for final disposition thereof.

(c) Failure of the warden or other like official to inform a prisoner, as required by this section, within one year after a detainer has been filed at the institution, shall entitle him to a final dismissal of the indictment, information or complaint with prejudice. (Acts 1978, No. 590, p. 693, § 3.)

§ 15-9-83. Action by official having custody of prisoner upon receipt of request for final determination.

The request shall be delivered to the warden or other like official having custody of the prisoner, who shall forthwith:

(1) Certify the term of commitment under which the prisoner is being held, the time already served on the sentence, the time remaining to be served, the good time earned, the time of parole eligibility of the prisoner and any decisions of the State Board of Pardons and Paroles relating to the prisoner; and

(2) Send by registered or certified mail, return receipt requested, one copy of the request and certificate to the court and one copy to the district attorney to whom it is addressed. (Acts 1978, No. 590, p. 693, § 4.)

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§ 15-9-84. Time within which indictment, etc., to be brought to trial; continuances; failure to bring indictment, etc., to trial within specified time.

Within 90 days after the receipt of the request and certificate by the court and district attorney or within such additional time as the court for good cause shown in open court may grant, the prisoner or his counsel being present, the indictment, information or complaint shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the

attorney of record and opportunity for him to be heard. If, after such a request, the indictment, information or complaint is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall dismiss it with prejudice. (Acts 1978, No. 590, p. 693, § 5.)

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§ 15-9-85. Escape by prisoner after request filed.

Escape from custody by any prisoner subsequent to his execution of a request for final disposition of an untried indictment, information or complaint voids the request. (Acts 1978, No. 590, p. 693, § 6.)

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§ 15-9-86. Article inapplicable to mentally ill persons.

This article does not apply to any person adjudged to be mentally ill. (Acts 1978, No. 590, p. 693, § 7.)

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§ 15-9-87. Notice to prisoners of provisions of article.

The warden or other like official having custody of prisoners shall arrange for all prisoners to be informed in writing of the provisions of this article, and for a record

thereof to be placed in the prisoner's file. (Acts 1978, No. 590, p. 693, § 8.)

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§ 15-9-88. Construction of article.

This article shall be so construed as to effectuate its general purpose to make uniform the laws of this state with those states joining in the Interstate Agreement on Detainers Act. (Acts 1978, No. 590, p. 693, § 9.)

Supreme Court, U.S.
FILED
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(2)

No. 00-492

IN THE

Supreme Court of the United States

STATE OF ALABAMA,

Petitioner,

v.

MICHAEL HERMAN BOZEMAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALABAMA

RESPONDENT'S BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

Respondent, Michael Herman Bozeman respectfully requests this Court to deny certiorari on the petition filed by the State of Alabama. In effect, the Petition is asking this Court to excuse a mistake made by local officials in clear violation of the language of the Interstate Agreement on Detainers (IAD),[1] Code of Alabama, § 15-9-81. This matter has been settled by the highest court of the State, and it does not affect any jurisdiction or authority outside of Alabama; this Court should not be troubled with such a matter. However, if this Court does decide to grant certiorari, the statute should be strictly construed according to its plain and unambiguous language and in keeping with its stated purpose of ensuring the rights of prisoners, and the judgment of the Alabama Supreme Court should be affirmed.

Facts Upon Which the Case is Based

Respondent takes issue with the facts that Petitioner has put forward in the Statement of the Case in its Brief. The Petitioner notes that charges on which this case is based "arose out of several incidents that occurred in June of 1995." Petitioner's Brief at 4. In fact, Petitioner is well aware that all of the incidents occurred within a very short span of time in the early morning hours of June 15, 1995, the same date on which Bozeman was arrested. (R. 34-35, 59-60, 75-76,

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[1]The IAD is also known as the Uniform Mandatory Disposition of Detainers Act (UMDDA) and is codified in Code of Alabama, 1975, § 15-9-81.

83-84, 97-98, 108, 118; H.R. 222-223; C. 18)[2] The federal charges of intimidating a witness seem to be connected to the shooting incidents with which Bozeman was charged in the present case. (H.R. 205-206, 222-223) However, there is no dispute that the investigation of the shooting incidents was done by the Opp, Alabama Police Department and that no further investigation was done after June of 1995. (H.R. 206-207) It is also undisputed that the Defendant was in federal custody from June 16, 1995 onward through the relevant times in this matter. (H.R. 219, C. 182)

Bozeman pled guilty to federal drug charges and was sentenced in federal court, the United States Court for the Middle District of Alabama, on November 3, 1995 in Case No. 95-140-N. (H.R. 219-220, C. 182) The federal presentencing report shows that the shooting charges with which Bozeman was charged in the present case were still pending at the time of his federal sentencing. (C. 183)

Bozeman was indicted for possession of a controlled substance in Covington County Case CC-95-350 in September of 1995. (H.R. 208, 225) On November 8, 1995, Bozeman was transferred to the custody of the Sheriff of Covington County, Alabama, was appointed counsel, arraigned, and was then returned to federal custody. (H.R. 209, C. 177-178). The charges in CC-95-350 were nol prossed on June 4, 1996. (H.R. 213-214) Bozeman was returned to federal custody without having been tried on the pending shooting

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[2]Respondent has chosen to adopt the designations for various parts of the record used by Petitioner. *See* Petitioner's Brief at 3-4 n.1.

charges; in fact, Bozeman was not indicted for the shooting charges until September of 1996. (C. 1-4)

Following his indictment, Covington County placed a detainer on Bozeman. (H.R. 214, C. 180) The same letter that requested that a detainer be placed on Bozeman also requested that Bozeman be transferred to Covington County. (C. 180) However, Bozeman had been moved from the federal penitentiary in Atlanta to the federal penitentiary in Marianna, Florida, and the Covington County District Attorney's office sent a second letter requesting that he be transferred to Covington County. (H.R. 212-213, C. 179)

In response to the prosecutor's request, Bozeman was brought from the federal penitentiary to Covington County in the custody of the Sheriff of Covington County on January 23, 1997. (C. 172, H.R. 215) On January 24, 1997, counsel was appointed for Bozeman and he was arraigned on the shooting charges. (C. 120) Since Bozeman's counsel had been appointed only moments before the arraignment, he requested and was granted leave to raise any issues that would normally be addressed prior to arraignment. (Arr. 4, 6) Also, a *pro se* motion to dismiss mailed by Bozeman arrived and was filed in the Clerk's Office on January 24, 1997. (C. 8-14) This motion invoked Articles IV(e) and V(e) of the IAD and requested a dismissal because of the transfer that had occurred in 1995.

Subsequent to the arraignment, Bozeman was again transferred back to the custody of the federal government. (H.R. 215, C. 172) At no point did Bozeman ever request that he be transferred back to federal custody after having been

brought to Covington County. (H.R. 224) Following the post-arraignment transfer in the present case, Bozeman's counsel filed a Motion to Dismiss claiming that his transfer prior to trial violated the IAD. (C. 73-74) Bozeman's counsel subsequently filed a memorandum brief that also raised the issue that the transfer to Covington County in November of 1995 while the shooting charges were pending (although he had not been indicted on them) also violated the IAD. (C. 79-85) This brief also made it clear that Bozeman claimed a violation based on Article IV of IAD "because the State filed a detainer and obtained custody of the Defendant." (C. 84)

The trial court deferred consideration of the IAD issue until after trial. (R. 11-12) The case proceeded to trial, and the jury returned guilty verdicts on all five counts. (R. 192-193, C. 95) The Court scheduled a hearing on the IAD issues which was held on March 12, 1997. (H.R. 197) Testimony from the District Attorney was taken at the hearing which established that Covington County had placed a detainer on Bozeman and had requested (and obtained) temporary custody of him from the federal authorities on three occasions. (H.R. 209-215) Documents were also introduced into evidence. (C. 171-183) There is no disagreement about the basic sequence of events, and the trial court included these findings in its order denying Bozeman's motion to dismiss. (C. 105)

Bozeman moved for a new trial, claiming that the violation of the IAD had hampered his ability to communicate with his counsel in preparation for trial. (C. 108-109) His request was denied following sentencing. (R. 272) Bozeman was sentenced on May 21, 1997 and an appeal

followed. (R. 268-273). The Alabama Court of Criminal Appeals affirmed the judgment by a memorandum opinion issued on May 8, 1998, but the Alabama Supreme Court reversed the judgment on April 21, 2000. The State of Alabama has now filed a petition for writ of certiorari with this Court.

REASONS FOR DENYING THE PETITION

A. The Language of the Statute is Clear

The Petitioner claims that "the Alabama Supreme Court did not consider the State's argument that Bozeman had not demonstrated any harm from the technical violation of Article IV(e) of the IAD." Petitioner's Brief at 10. In fact, the State's contention that harm needed to be shown was considered and rejected by the Alabama Supreme Court because the language of the statute is clear. "The IAD is not ambiguous. It would require a tortured reading of the statute for us to conclude, as the State suggests, that a brief violation of the IAD can be ignored." *Ex parte Bozeman*, No. 1971759, slip op. at 8 (Ala. Apr. 21, 2000). Petitioner's Brief at App. 8.

The Petitioner also criticizes the Alabama Supreme Court because it "applied state statutory construction law in reaching its decision." Petitioner's Brief at 11. In fact, the Alabama Supreme Court merely used the principle that a court ought to be bound by the plain meaning of the words in a statute, hardly a concept unique to Alabama. *See Ex parte Bozeman*, No. 1971759, slip op. at 8-9 (Ala. Apr. 21, 2000). Petitioner's Brief at App. 9. The interpretation of the Alabama Supreme Court is strengthened when one considers that a primary reason for the adoption of the IAD was to rec-

tify prosecutorial abuses that were common before the advent of the IAD. "Since the [Agreement] is remedial in character, it should be construed liberally in favor of the prisoner." Council of State Governments, Handbook on Interstate Crime Control 134 (1978 ed.), quoted in *Carchman v. Nash*, 473 U.S. 716, 735 n.1. (Brennan, J., dissenting).

B. The Split Among Various State and Federal Jurisdictions Does Not Interfere With Federal Authority.

The Petitioner is, of course, correct that there is (and has been) a split among various jurisdictions regarding how strictly to interpret the IAD. What is not certain is how pressing a problem this is as a practical matter. In *Taylor v. United States*, 504 U.S. 991 (1992), Justice White noted the division and chided the Court for not granting certiorari.[3] Yet, the system continues to operate eight years later.

This Court has noted that the IAD "is a congressionally sanctioned interstate compact the interpretation of which presents a question of federal law." *Cuyler v. Adams*, 449 U.S. 433, 442 (1981). Notwithstanding this pronouncement, the IAD is also a state law in the states that have adopted it. *Reed v. Farley*, 512 U.S. 339, 347 (1994) ("While the IAD is

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[3]Custody of Taylor had been obtained pursuant to a writ of habeas corpus ad prosequendum. *Id.* The relation of the IAD to writs of habeas corpus ad prosequendum had been discussed by this Court in *United States v. Mauro*, 436 U.S. 340 (1978). Although a detainer had apparently been filed prior to the writ, it had not been requested by the United States Attorney and the United States Attorney was not even aware of the detainer. *United States v. Taylor*, 947 F.2d 1002, 1003 (1st Cir. 1991). Moreover, there were issues of waiver: the defendant told the magistrate that he would prefer to be kept in state custody rather than federal custody. *Id.*

indeed state law, it is a law of the United States as well."). The purpose of the Compact Clause, U.S. Const. Art. I, 10, cl. 3, is "to ensure that Congress would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority." *Cuyler v. Adams*, 449 U.S. at 440. The only aspect of the IAD that implicates possible interference with federal authority is the obligation that sending states have to cooperate with receiving states. All other aspects of the IAD have an effect only within a specific jurisdiction. If Congress had wished to, it could have passed the IAD as a federal law preempting all similar state laws (undoubtedly invoking the Commerce Clause as justification). It did not do so. Instead, it joined the IAD as a member state.[4]

The Petitioner's Brief expresses great concern that prisoners might be treated differently in Georgia than they would be in Alabama. Petitioner's Brief at 17-18. However, such is the case already without the IAD. Each state has its own criminal laws, and they are not identical. Constitutional concerns set a floor below which a state may not fall in the man-

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[4]The Federal government joined the IAD in 1970. *Carchman v. Nash*, 473 U.S. 716, 728 (1985). However, the IAD was "drafted in 1956 by the Council of State Governments . . . founded on a 'statement of aims or guiding principles' drawn up in 1948." *Carchman v. Nash*, 473 U.S. at 748 (Brennan, J., dissenting). It was then included in Council of State Governments, Suggested State Legislation Program for 1957 (1956). *United States v. Mauro*, 436 U.S. 340, 351, 363 n.28 (1978). Twenty-five states had joined the IAD by the time that Congress considered the law in 1970. *Carchman v. Nash*, 473 U.S. at 749 n.18. *Cf. United States v. Mauro*, 436 U.S. 340, 355 (1978) (quoting Senator Hruska as stating that the IAD had "already been adopted by 28 States" during Senate debates on joining the IAD).

ner in which it chooses to enforce its laws, but other than this limitation, a state is free to act within its own sphere. If the Supreme Court of Alabama chooses to dismiss Bozeman's Alabama convictions, such an action does not affect any other state. His federal conviction was unchanged, and if he had pending charges in any other state, that state would still have been free to prosecute him under that state's laws.

The Petitioner's suggestion that in Alabama one can "get away with murder" is a cheap shot. Petitioner's Brief at 18. The Petitioner knows that Bozeman did not hurt anyone, and it is aware that he has been leading a quiet and peaceful life since being released from federal prison. Nevertheless, "the unfair and inconsistent results" that concern the Petitioner, Petitioner's Brief at 18, are certainly no more unfair or inconsistent than the fact that a criminal sentenced in Covington County, Alabama will receive a harsher sentence than a criminal sentenced on identical facts across the state line in Okaloosa County, Florida. "Unfair and inconsistent" is a charge better leveled at any member state that chooses when and if a prisoner's rights under the IAD are given due respect.

C. The Decision of the Alabama Supreme Court is Not in Conflict with any Prior Decision of this Court Dealing with the IAD

Although Petitioner attempts to portray *Ex parte Bozeman*, No. 1971759 (Ala. Apr. 21, 2000), as being in conflict with "this Court's prior decisions concerning the purposes behind and construction of the IAD . . . this Court's decisions on statutory construction, on technical violations of statutes or

rules, and on application of the harmless error rule to violations of statutes," Petitioner's Brief at 19, a closer look at the cases cited shows that this portrayal is false. In fact, many of the cases put forward by the Petitioner actually support the reasoning of the Alabama Supreme Court.

The Petitioner cites *Carchman v. Nash*, 473 U.S. 716 (1985), for the proposition that the Alabama Supreme Court "ignored this Court's prior decisions concerning the purposes behind and construction of the IAD." Petitioner's Brief at 19. In fact, in *Carchman v. Nash*, this Court reversed the decision of the Third Circuit Court of Appeals which "decline[d] to adopt a technical interpretation of the relevant language . . . . . and instead relied on the broader purposes of the legislation." 473 U.S. at 723 (quoting *Nash v. Jeffes*, 739 F.2d 878 (3d Cir. 1984)). This Court considered the plain language of the IAD and concluded that the IAD did not apply to detainers based on violation of probation. 473 U.S. at 74-726. The broader purposes of the legislation did not compel a conclusion "contrary to the plain language of the Agreement." 473 U.S. at 729.

The Petitioner has misrepresented this Court's holding in *New York v. Hill*, 120 S. Ct. 659 (2000), stating that *Hill* stands for the proposition that "technical violation of IAD does not require dismissal of indictment." Petitioner's Brief at 19-20. *Hill* was decided on the basis of waiver, not on the basis of a technical violation,[5] and this Court relied on the

[5]In fact, this Court expressed caution regarding a too expansive interpretation of the IAD. Commenting upon the suggestion that an "agreement in open court to a trial date outside the allowable time period can itself be viewed as a "necessary or reasonable continuance" for "good cause

plain language of the statute: "Nothing in the IAD requires or even suggests a distinction between waiver proposed and waiver agreed to." 120 S. Ct. at 666.

In *United States v. Mauro*, this Court held that a writ of habeas corpus ad prosequendum was not a detainer, vindicating the clear language of the statute, although this Court did hold that once a detainer had been lodged, a writ of habeas corpus ad prosequendum could operate as a request for temporary custody under Article IV of the IAD. 436 U.S. 340, 361, 363 (1978).

Although the Petitioner wants to maintain that *Reed v. Farley*, 512 U.S. 339 (1994), applies a harmless error analysis to the IAD, in fact, this Court's opinion hinged on the fact that it determined that the error complained of was not cognizable under 28 U.S.C. § 2254, the federal habeas corpus statute.[6] 512 U.S. at 342. Moreover, the issue of waiver, made explicit in *New York v. Hill*, 120 S. Ct. 659 (2000), is implicated in *Reed v. Farley* because the opinion notes that there were "postponements made and explained in [defendant's] presence in open court," and the defendant registered

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shown in open court,'" this Court noted that even though such an agreement "might sometimes merit this description, it is far from clear that it always does so, or that it does so here." 120 S. Ct. At 665 n.1. The clear implication is that the plain language of the statute does matter and that, absent waiver, the holding of *Hill* might very well have been different.

[6]The dissent believes that the "unmistakable clarity" of the IAD makes a violation of its terms by a member state a serious enough matter to be considered under *habeas corpus* review. *Reed v. Farley*, 512 U.S. 339, 367-368 (1994) (Blackmun, J., dissenting).

no objection to the trial date at the time it was set, and suffered no prejudice attributable to the delayed commencement." 512 U.S. at 342.[7]

D. The Decision of the Alabama Supreme Court is Not in Conflict with any Prior Decision of this Court Dealing with Harmless Error

The cases applying harmless error analysis to other rules and statutes are also inapposite. Most notably, none of the other rules or statutes have provisions that say "if you do this (or do not do this), a particular sanction will be imposed." The IAD is clear and unambiguous in imposing the sanction of dismissal for violation of its terms. *See* IAD, art. III(d); IAD, art. IV(e); IAD, art. V(c). Petitioner's Brief, App. 35-39.

In *Peguero v. United States*, 526 U.S. 23, 24-25 (1999), the trial judge failed to notify the defendant of his right to appeal, but this was a harmless error because the defendant was aware of this right. Rule 32(a)(2) of the Federal Rules of Criminal Procedure under which Peguero was sentenced required notification of the right to appeal but did not provide for any consequences if the notification were not given. 526 U.S. at 26.

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[7]In fact, Reed requested a delay himself because he needed more time to prepare. *Reed v. Farley*, 512 U.S. 339, 353 (1994). At the first pretrial conference, at which the trial date was set, Reed "indicate[d] a preference for trial at a time when he would be out of jail on bond" and noted the dates on which he expected to be released from federal custody which were after the 120 day period would have expired. *Id.* at 342-343.

Federal Rule of Procedure 8(b) came under scrutiny in *United States v. Lane*, 474 U.S. 438 (1986). The claim was that one count of an indictment was improperly joined to the other five counts. *Id.* at 442. " The Court of Appeals held that misjoinder' is inherently prejudicial.' " *Id.* at 444. However, nothing in the language of Rule 8(b) requires automatic reversal for misjoinder. *See Id.* at 443 n.3 (quoting Rule 8(b)).[8] This Court held that a harmless error analysis under Rule 52(a) was appropriate to misjoinder and held "that an error involving misjoinder 'affects substantial right' and requires reversal only if the misjoinder results in actual prejudice because it 'had substantial and injurious effect of influence in determining the jury's verdict.' " *Id.* at 449 (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946)). This Court concluded that "[o]nly by so holding can we bring rules 8 and 52(a) 'into substantial harmony, not into square conflict.' " *Id.* (quoting *Kotteakos,* 328 U.S. at 775). An analysis requiring a violation of the IAD to be considered harmless error unless the prisoner proved prejudice would be in square conflict with the unambiguous language of the IAD.

The Bail Reform Act of 1984 requires a detention hearing to be held " 'immediately upon the person's first appearance before the judicial officer' " and provides that a continuance of the hearing may not exceed five days. *United States v. Montalvo-Murillo*, 495 U.S. 711, 714 (1990) (quoting 18 U.S.C. § 3142(f)). Montalvo-Murillo's hearing was contin-

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[8]The government contended that no misjoinder had occurred although it did not contest the Court of Appeals' holding that misjoinder is inherently prejudicial. *Lane*, 474 U.S. at 444 n.5.

ued beyond the permissible time limit, and the district court, affirmed by the Court of Appeals, found "that pretrial release on conditions was the appropriate remedy for violation of the statutory requirement." [9] *Id.* at 716. In reversing, this Court noted,

> [a] prompt hearing is necessary, and the time limitations of the Act must be followed with care and precision. But the Act is silent on the issue of a remedy for violations of its time limits. Neither the timing requirements nor any other part of the Act can be read to require, or even suggest, that a timing error must result in release of a person who should otherwise be detained.

Id. at 716-717. The contrast with the IAD is obvious. The IAD does more that just suggest a remedy: it mandates dismissal of the indictment as the sanction for violating its terms.

In *Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988), the district court had dismissed some indictments because of prosecutorial misconduct before the grand jury that returned the indictments. *Id.* at 253. This Court held that the supervisory authority of the district court should be limited by the harmless error provisions of Federal Rule of Criminal Procedure 52(a), stating that "federal courts have no more discretion to disregard the Rule's mandate than they do to disregard constitutional or statutory provisions." *Id.* at 255. Of course, Petitioner is suggesting that courts should

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[9]Montalvo-Murillo promply fled and was still at large when the case reached this Court. *Id.* at 713.

disregard the statutory provisions of the IAD; Respondent maintains that they are without discretion to do so.

E. The Facts and Statutory Construction Do Not Support a Grant of Certiorari

There is a clear distinction between the rules that were technically violated in the cases cited by the Petitioner and the statutory provision that was violated in the present case. The Petitioner does not like the result, but to analogize a violation of the IAD to the rule violations of *Peguero v. United States*, 526 U.S. 23 (1999), *United States v. Lane*, 474 U.S. 438 (1986), *United States v. Montalvo-Murillo*, 495 U.S. 711 (1990), and *Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988), "would require a tortured reading of the statute." *Ex parte Bozeman*, No. 1971759, 2000 WL 429936 (Ala. Apr. 21, 2000). Petitioner's Brief at App. 8. The IAD, by its own terms, clearly imposes a remedy for violations; to hold contrary to its plain language would in effect make the words of the statute meaningless. This is also in keeping with the time-honored tradition of statutory construction which looks first to the plain meaning of the words used in the statute.

> It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times.

Market Company v. Hoffman, 101 U.S. 112, 115-116 (1879).

The determination of the Alabama Supreme Court should be respected. As noted in *Reed v. Farley*, 512 U.S. 339, 355 (1994), the IAD is both federal law and state law, and "[w]e have no more reason to suppose that the Supreme Court of [the state] seeks to undermine the IAD than we have to suppose that it seeks to undermine any other law of [the state]." Moreover, this court has noted that

> [t]he legislative history of the [IAD], including the comments of the Council of State Governments and the congressional Reports and debates preceding the adoption of the Agreement on behalf of the District of Columbia and the Federal Government, emphasizes that a primary purpose of the Agreement is to protect prisoners against whom detainers are outstanding.

Cuyler v. Adams, 449 U.S. 433, 448-449 (1981). The interpretation of the IAD promoted by the Petitioner would eviscerate any protection for prisoners. The Petitioner claims that "the state could suffer great harm by being required to let a possible criminal go free," Petitioner's Brief at 20-21, but it had it within its own power under the IAD to prevent this result in both this particular case and indeed all cases. A prisoner, by contrast, would no longer have the explicit statutory protection of the IAD if this Court allows member state not to comply "where there is no great harm to the prisoner," Petitioner's Brief at 20. There is, by definition, great harm to the prisoner if the specific prisoner protections contained within the statute are all gutted by the member states

in the name of "technical violations." No personal specific harm need be shown.

Finally, the Petitioner's argument overlooks the very real damage that would be done to any chance of rehabilitation if it is made clear that the prisoner is held to a different standard than the receiving states. The benefits to the prisoner would be seen, and rightly so, as illusory.[10] A prisoner must follow the hypertechnical procedures,[11] but the government can violate the law with impunity. One may question the wisdom of the legislature in adopting the IAD, but once it has done so, the unambiguous language of the statute must be given effect. It is simply wrong to pardon technical violations on the part of the government while waving similar technical violations tauntingly in the face of prisoners.

---

[10]Can anyone honestly conceive of a situation in which an elected judge, such as all judges in Alabama are, freed from the constraints of the plain language of the IAD, would ever find prejudice to the prisoner sufficient to overcome the vague "purposes behind the IAD?"

[11]The cases from all jurisdictions almost uniformly require a prisoner initiating the resolution of a detainer under Article III of the IAD to adhere strictly to the technical requirements of the statute. *See* Leslie W. Abramson, "The Interstate Agreement of Detainers: Narrowing Its Availability and Applications, 21 New Eng. J. on Crim. & Civ. Confinement 1, 18-20 (1995). *See also, e.g., Turner v. State*, 584 So. 2d 925, 930 (Ala. Crim. App. 1991); *Haywood v. State*, 501 So. 2d 515, 518 (Ala. Crim. App. 1986); *St. John v. State*, 473 So. 2d 658, 661 (Ala. Crim. App. 1985); *Whitley v. State*, 392 So. 2d 1220, 1223-1224 (Ala. Crim. App. 1980). In construing the language of Article IV strictly, the Alabama Supreme Court was merely following prior Alabama case law strictly construing Article III.

CONCLUSION

The issue raised by the Petitioner is not a pressing matter and would not seem to involve a large number of cases. In fact, it is within the Petitioner's power to avoid the situation entirely in the future simply by following the letter of the law with regard to IAD transfers of custody. Moreover, the effect of the Alabama Supreme Court's ruling in *Ex parte Bozeman*, No. 1971759 (Ala. Apr. 21, 2000) only affects Alabama; it does not impede the ability of any other jurisdictions to enforce their laws. For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

Mark John Christensen
Counsel for Respondent,
Michael Herman Bozeman
One East Court Square
P.O. Box 507
Andalusia, AL 36420
(334) 222-7118

Supreme Court, U.S.
FILED
JAN 25 2001
OFFICE OF THE CLERK

No. 00-492

In The

Supreme Court of the United States

STATE OF ALABAMA,

Petitioner,

v.

MICHAEL HERMAN BOZEMAN,

Respondent.

On Writ Of Certiorari
To The Alabama Supreme Court

JOINT APPENDIX

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Counsel for Respondent

Counsel of Record

Petition For Certiorari Filed September 28, 2000
Certiorari Granted December 11, 2000

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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RELEVANT DOCKET ENTRIES

In the Covington County Circuit Court:

1.	9/20/96	Indictment returned
2.	1/24/97	(1) Respondent's pro se motion to dismiss the indictment on the basis of violations of Article IV(e) and V(e) of the Interstate Agreement on Detainers filed; (2) Respondent appointed counsel; and, (3) Respondent arraigned
3.	2/21/97	Defendant's Motion To Dismiss filed
4.	2/25/97	Memorandum Brief In Support Of Defendant's Motion To Dismiss filed
5.	2/27/97	Trial began
6.	2/28/97	(1) Jury verdict returned, and (2) Order entered setting hearing on issues concerning the Interstate Agreement on Detainers raised by Respondent in his motions to dismiss
7.	3/12/97	Hearing on Respondent's motions to dismiss the indictment on the grounds that the Interstate Agreement on Detainers had been violated
8.	4/25/97	Renewal Of Defendant's Motion To Dismiss filed

9.	5/16/97	Order of Covington County Circuit Judge M. Ashley McKathan entered denying Respondent's motions to dismiss the indictments due to alleged violations of the Interstate Agreement on Detainers
10.	5/19/97	Respondent's Motion For Judgment Notwithstanding The Verdict Or In The Alternative For New Trial filed
11.	5/21/97	(1) Order entered denying Respondent's Motion For Judgment Notwithstanding The Verdict Or In The Alternative For New Trial, and (2) Notice of appeal to the Alabama Court of Criminal Appeals filed by Respondent

In the Alabama Court of Criminal Appeals

12.	5/8/98	Alabama Court of Criminal Appeals issued Memorandum Opinion affirming Respondent's convictions and sentences
13.	5/22/98	Application for rehearing filed in the Alabama Court of Criminal Appeals by Respondent
14.	6/19/98	Alabama Court of Criminal Appeals overruled application for rehearing

In the Alabama Supreme Court

15.	7/31/98	Petition for a writ of certiorari filed in Alabama Supreme Court by Respondent
16.	2/19/99	Alabama Supreme Court granted the petition for a writ of certiorari
17.	4/21/00	Alabama Supreme Court issued opinion reversing convictions, holding that a violation of the Interstate Agreement on Detainers required reversal
18.	5/5/00	Application for rehearing filed in the Alabama Supreme Court by Petitioner
19.	6/30/00	Application for rehearing overruled by Alabama Supreme Court

In the United States Supreme Court

20.	9/28/00	Petitioner filed petition for writ of certiorari in United States Supreme Court
21.	12/11/00	Petition for a writ of certiorari granted by United States Supreme Court

IN THE CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,	*	
PLAINTIFF,	*	
VS	*	CC-97-16
MICHAEL HERMAN BOZEMAN,	*	
DEFENDANT.	*	

GRAND JURY NO. 230-232

THE STATE OF ALABAMA, **CIRCUIT COURT**
Covington County

SHOOTING OR
DISCHARGIN[G] FIREARM
INTO OCCUPIED BUILDING,
ETC. CLASS B FELONY
SHOOTING OR DISCHARGING
FIREARM INTO UNOCCUPIED
VEHICLE, ETC.
CLASS C FELONY
SHOOTING OR DISCHARGING
FIREARM INTO UNOCCUPIED
BUILDING, ETC.
CLASS C FELONY

SID # 1139445
SEPTEMBER 1996 TERM

COUNT I

THE GRAND JURY OF COVINGTON COUNTY CHARGES THAT BEFORE THE FINDING OF THIS INDICTMENT, MICHAEL HERMAN BOZEMAN, A/K/A SONNY BOZEMAN, WHOSE NAME IS

UNKNOWN TO THE GRAND JURY OTHER THAN AS STATED, DID SHOOT OR DISCHARGE A FIREARM, EXPLOSIVE OR OTHER WEAPON WHICH DISCHARGES A DANGEROUS PROJECTILE, TO-WIT: PISTOL AND/OR RIFLE, INTO A DWELLING, TO-WIT: 2508 HIGHWAY 84 WEST, OPP, ALABAMA, WHILE SAID DWELLING WAS OCCUPIED BY MILTON WILLIAMS, IN VIOLATION OF TITLE 13A-11-61 OF THE CODE OF ALABAMA, 1975, AND AS LAST AMENDED, AGAINST THE PEACE AND DIGNITY OF THE STATE OF ALABAMA.

COUNT II

THE GRAND JURY OF COVINGTON COUNTY CHARGES THAT BEFORE THE FINDING OF THIS INDICTMENT, MICHAEL HERMAN BOZEMAN, A/K/A SONNY BOZEMAN, WHOSE NAME IS UNKNOWN TO THE GRAND JURY OTHER THAN AS STATED, DID SHOOT OR DISCHARGE A FIREARM, EXPLOSIVE OR OTHER WEAPON WHICH DISCHARGES A DANGEROUS PROJECTILE, TO-WIT: PISTOL AND/OR RIFLE, INTO AN UNOCCUPIED DWELLING, BUILDING, RAILROAD LOCOMOTIVE, RAILROAD CAR, AIRCRAFT, AUTOMOBILE, TRUCK OR WATERCRAFT, TO-WIT: CHEVROLET TRUCK BELONGING TO MILTON WILLIAMS, IN VIOLATION OF TITLE 13A-11-61 OF THE CODE OF ALABAMA, 1975, AND AS LAST AMENDED, AGAINST THE PEACE AND DIGNITY OF THE STATE OF ALABAMA.

COUNT III

THE GRAND JURY OF COVINGTON COUNTY CHARGES THAT BEFORE THE FINDING OF THIS INDICTMENT, MICHAEL HERMAN BOZEMAN, A/K/A SONNY BOZEMAN, WHOSE NAME IS UNKNOWN TO THE GRAND JURY OTHER THAN AS STATED, DID SHOOT OR DISCHARGE A FIREARM, EXPLOSIVE OR OTHER WEAPON WHICH DISCHARGES A DANGEROUS PROJECTILE, TO-WIT: PISTOL AND/OR RIFLE, INTO AN UNOCCUPIED DWELLING, BUILDING, RAILROAD LOCOMOTIVE, RAILROAD CAR, AIRCRAFT, AUTOMOBILE, TRUCK OR WATERCRAFT, TO-WIT: BUICK AUTOMOBILE, IN VIOLATION OF TITLE 13A-11-61 OF THE CODE OF ALABAMA, 1975, AND AS LAST AMENDED, AGAINST THE PEACE AND DIGNITY OF THE STATE OF ALABAMA.

COUNT IV

THE GRAND JURY OF COVINGTON COUNTY CHARGES THAT BEFORE THE FINDING OF THIS INDICTMENT, MICHAEL HERMAN BOZEMAN, A/K/A SONNY BOZEMAN, WHOSE NAME IS UNKNOWN TO THE GRAND JURY OTHER THAN AS STATED, DID SHOOT OR DISCHARGE A FIREARM, EXPLOSIVE OR OTHER WEAPON WHICH DISCHARGES A DANGEROUS PROJECTILE, TO-WIT: PISTOL AND/OR RIFLE, INTO A DWELLING AND/OR BUILDING, TO-WIT: 503 1/2 EAST PARK AVENUE, OPP, ALABAMA, WHILE SAID DWELLING AND/OR BUILDING, WAS OCCUPIED BY YVONNE BOZEMAN, IN VIOLATION OF TITLE 13A-11-61 OF THE CODE OF

ALABAMA, 1975, AND AS LAST AMENDED, AGAINST THE PEACE AND DIGNITY OF THE STATE OF ALABAMA.

COUNT V

THE GRAND JURY OF COVINGTON COUNTY CHARGES THAT BEFORE THE FINDING OF THIS INDICTMENT, MICHAEL HERMAN BOZEMAN, A/K/A SONNY BOZEMAN, WHOSE NAME IS UNKNOWN TO THE GRAND JURY OTHER THAN AS STATED, DID SHOOT OR DISCHARGE A FIREARM, EXPLOSIVE OR OTHER WEAPON WHICH DISCHARGES A DANGEROUS PROJECTILE, TO-WIT: A PISTOL AND/OR RIFLE, INTO AN UNOCCUPIED DWELLING AND/OR BUILDING, TO-WIT: 303 MONROE STREET, OPP, ALABAMA, IN VIOLATION OF TITLE 13A-11-61 OF THE CODE OF ALABAMA, 1975, AND AS LAST AMENDED, AGAINST THE PEACE AND DIGNITY OF THE STATE OF ALABAMA.

/s/ Euginia L. Loggins
District Attorney of the 22nd
Judicial Circuit

No. CC-97-16

THE STATE OF ALABAMA
Covington County

CIRCUIT COURT
SEPTEMBER Term, 1996

THE STATE

vs.

MICHAEL HERMAN BOZEMAN
A/K/A SONNY BOZEMAN

INDICTMENT

Charge SHOOTING OR DISCHARGING FIREARM INTO OCCUPIED BLDG. ETC.
SHOOTING OR DISCHARGING FIREARM INTO UNOCCUPIED VEHICLE, ETC.
SHOOTING OR DISCHARGING FIREARM INTO UNOCCUPIED BUILDING, ETC.

/s/ Euginia L. Loggins
Prosecutor

WITNESSES:

Grand Jury No. 230-232

A TRUE BILL

/s/ Angela Stokes
Foreman Grand Jury

Presented to the presiding Judge in open Court by the Foreman of the Grand Jury in the presence of 16 other Grand Jurors and filed by the order of Court this 20 day of September, 1996

/s/ Roger A. Powell
Clerk

Bail Fixed at $40,000

/s/ Jerry E. Stokes
Judge.

[In the Circuit Court of Covington County, Alabama]

WRIT OF ARREST – GRAND JURY INDICTMENT

STATE OF ALABAMA COVINGTON COUNTY
CIRCUIT COURT

AGENCY NUMBERS:
WARRANT NUMBER: GJ 96 000230.00
OTHER CASE NRB:

TO ANY LAWFUL OFFICER OF THE STATE OF ALABAMA:

YOU ARE HEREBY COMMANDED TO ARREST MICHAEL HERMAN BOZEMAN AND BRING HIM/HER BEFORE THE CIRCUIT COURT OF COVINGTON COUNTY TO ANSWER THE STATE OF ALABAMA ON A CHARGE(S) OF:

DISCHARGE GUN OCC BL CLASS:B TYPE:F
DISCHARGE GUN UNOCC CLASS:C TYPE:F
DISCHARGE GUN UNOCC CLASS:C TYPE:F

AND HAVE YOU THEN AND THERE THIS WRIT WITH YOUR RETURN THEREON.

YOU WILL RECEIVE UNTO YOUR CUSTODY AND DETAIN HIM/HER UNTIL THE _____ DAY OF _____ 19___, OR UNTIL LEGALLY DISCHARGED.

DATED THIS 20 DAY OF SEPTEMBER, 1996

BOND SET AT:
(1) $40,000.00 BOND TYPE: PROPERTY BOND

(2) _____

(3) _____

/s/ Roger A. Powell
JUDGE/CLERK/MAGISTRATE OF CIRCUIT COURT

CHARGES: DISCHARGE GUN OCC BL 13A-011-061
F FELONY

NAME: MICHAEL HERMAN BOZEMAN ALIAS:
ADDRESS: ROUTE 2 BOX 134A ALIAS:
ADDRESS:
CITY: OPP STATE: AL ZIP: 36467 0000

EMPLOYMENT:
DOB: 03/08/45 RACE: W

SEX: M HAIR:

EYE: HEIGHT: 0'0"

WEIGHT: 000 SID: 000000000

SSN: 420585121

EXECUTION

EXECUTED THE WITHIN WARRANT BY ARRESTING THE DEFENDANT AND

(✓) PLACING DEFENDANT IN THE COVINGTON COUNTY JAIL

( ) RELEASING DEFENDANT ON APPEARANCE BOND

THIS 24 DAY OF JANUARY 1997

SHERIFF

/s/ Elliot King
BY

OPERATOR: DES LAST UPDATE: 092096

[In the Circuit Court of Covington County, Alabama]

AFFIDAVIT of SUBSTANTIAL HARDSHIP and ORDER

State of Alabama
Unified Judicial System
Form C-10
Page 1 of 2 Rev. 2/95

Case Number
Sept. 1996
G.J. #230-232

IN THE Circuit
(Circuit, District, or Municipal)

COURT OF Covington ALABAMA
(Name of County or Municipality)

STYLE OF CASE:
State of Alabama (Plaintiff(s)) v. Michael H. Bozeman (Defendant(s))

TYPE OF PROCEEDING: _____

CHARGE(s) (if applicable): _____

[ ] **CIVIL CASE** – I, because of substantial hardship, am unable to pay the docket fee and service fees in this case. I request that payment of these fees be waived initially and taxed as costs at the conclusion of the case.

[ ] **CIVIL CASE** – (such as paternity, support, termination of parental rights, dependency) – I am financially unable to hire an attorney and I request that the Court appoint one for me.

[X] **CRIMINAL CASE** – I am financially unable to hire an attorney and request that the Court appoint one for me.

[ ] **DELINQUENCY/NEED OF SUPERVISION** – I am financially unable to hire an attorney and request that the Court appoint one for my child/me.

SECTION I. AFFIDAVIT

1. IDENTIFICATION

Full Name Michael H. Bozeman
Date of birth 3-8-45

Spouse's Full Name (*if married*) None

Complete Home Address Rt 2 Box 134A Opp, Al.

Number of People Living in Household Incarcerated

Home Telephone No. _____

Occupation/Job Incarcerated
Length of Employment _____

Driver's License Number 2200274
Social Security Number 420 58 8121

Employer None
Employer's Telephone No. _____

Employer's Address _____

2. ASSISTANCE BENEFITS

Do you or anyone residing in your household receive benefits from any of the following sources? (*if so, please check those which apply.*)

[ ] AFDC [ ] Food Stamps
[ ] SSI [ ] Medicaid
[ ] Other _____

3. INCOME/EXPENSE STATEMENT

Monthly Gross Income:

Monthly Gross Income $17.00

Spouse's Monthly Gross Income *(unless a marital offense)*	____	
Other Earnings: Commissions, Bonuses, Interest Income, etc.	____	
Contributions from Other People Living in Household	____	
Unemployment/Workmen's Compensation, Social Security, Retirement, etc.	____	
Other Income (*be specific*)		
_____	____	
TOTAL MONTHLY GROSS INCOME		$17.00

Monthly Expenses:

A. Living Expenses		
Rent/Mortgage	$17.00	
Total Utilities: Gas, Electricity, Water, etc.	____	
Food	____	
Clothing	____	
Health Care/Medical	____	
Insurance	____	
Car Payment(s)/ Transportation Expenses	____	
Loan Payment(s)	____	

Monthly Expenses: (cont'd from page 1)

Credit Card Payment(s)	____	
Educational/Employment Expenses	____	
Other Expenses (*be specific*)		
_____	____	
Sub-Total		A $____

B. Child Support Payment(s)/ Alimony ____

Sub-Total **B** $____

C. Exceptional Expenses ____

TOTAL MONTHLY EXPENSES *(add subtotals from A & B monthly only)* $17.00

Total Gross Monthly Income less total monthly expenses:

DISPOSABLE MONTHLY INCOME $____

---

4. LIQUID ASSETS:

Cash on Hand/Bank *(or otherwise available such as stocks, bonds, certificates of deposit)* $ 0

Equity in Real Estate (value of property less what you owe) _____

Equity in Personal Property, etc. (such as the value of motor vehicles, stereo, VCR, furnishings, jewelry, tools, guns less what you owe) _____

Other *(be specific)* Do you own anything else of value?
[ ]Yes [ ]No

(land, house boat, TV, stereo, jewelry) _____
If so, desribe _____

_____

TOTAL LIQUID ASSETS

$ 0

---

5. Affidavit/Request

I swear or affirm that the answers are true and reflect my current financial status. I understand that a false statement or answer to any question in the affidavit may subject me to the penalties of perjury. I authorize the Court or its authorized representative to attain records or information pertaining to my financial status from any source in order to verify information provided by me. I further understand and acknowledge that, if the Court appoints an attorney to represent me, the Court may require me to pay all or part of the fees and expenses of my court-appointed counsel.

Sworn to and subscribed before me this

24th day of January, 1997.

/s/ Sandra S. Sansom
Judge/Clerk/Notary

/s/ Michael H. Bozeman
Affiant's Signature

/s/ Michael H. Bozeman
Print or Type Name

SECTION II. ORDER OF COURT

IT IS THEREFORE, ORDERED AND ADJUDGED BY THIS COURT AS FOLLOWS:

[ ] Affiant is not indigent and request is DENIED.

[ ] Affiant is partially indigent and able to contribute monetarily toward his defense; therefore, defendant is ordered to pay $____ toward the anticipated cost of appointed counsel. Said amount is to be paid to the Clerk of Court or as otherwise ordered and disbursed as follow: _____

[✓] Affiant is indigent and request is GRANTED.

[ ] The prepayment of docket fees is waived.

IT IS FURTHER ORDERED AND ADJUDGED that Mark Christensen, is hereby appointed as counsel to represent affiant.

IT IS FURTHER ORDERED AND ADJUDGED that the Court reserves the right and may order reimbursement of attorney's fees and expenses, approved by the Court and paid to the appointed counsel, and costs of court.

Done this 24th day of January, 1997.

/s/ Jerry E. Stokes
Judge

[Filed Jan. 24, 1997]

IN THE CIRCUIT COURT OF COVINGTON COUNTY, STATE OF ALABAMA

STATE OF ALABAMA, plaintiff

v.

MICHAEL HERMAN BOZEMAN, defendant

action# sid# 1139445 Oct 9, 1996.

JUDGE ASHLEY McKATHAN.

Complaint and Request for Declaratory Judgment as Motion to dismiss indictment on the basis of; Article VI of U.S. Constitution and Alabama Code (1975), §15-9-81 represents a contracting I.A.D. et. seq.; denial of procedural due process as guaranteed in Amendment 14 of the United States Constitution and its Amendments; by Judicial Notice.

[A] Comes now, Michael Herman Bozeman, Pro Se, making a complaint for relief of "denial" or rather complete disregard for the Supreme Law, Amendment 14.

[B] Mr. Bozeman, moves the Court, to rule that the State of Alabama, has initiate prosecution in direct violation to articles of I.A.D. Act in §2 Article IV e, and Article V e, of the self same act; in disregard of Constitutional prohibitions of Amendment 14, section 1,5.

[C] Mr. Bozeman was and is in "Federal Custody" and therefore was taken by "Writ" on 11-8-95, after being duly convicted and sentence imposed by U.S.D.C.J.-Honorable W. Harold Albritton, in case #95-140-N; and a copy of Presentence Report page #7 list the judicial notice of

§2, Art. IV e, and Art. V e; sentence imposed on 11-3-1995.

[D] The Court may know that the Prosecutor has been known to misuse and abuse a legal process; and Mr. Bozeman requests the Court to take judicial notice of page 7, Bozeman's PSR ¶3, ¶34 as recorded for all to see; and a photocopy of case #95-000350-00- Judge MAM. file action summary.

[E] Both paragraph "C" and "D" above show a writ was issued, and custody was obtained, and all matters pending were to be processed by I.A.D. law.

[F] All party States agreed that the Godly, sacred objectives of our Great Constitution, forbids the outright denial of equal application, equal protection, and due process in all criminal action had or intended to be taken.

[G] The laws of the Alabama Constitution also forbid such acts and/or endorsed, to deprive, or punish one contrary to the Constitution and its Amendments as outlined in public policy.

[H] The action to prosecute Mr. Bozeman, in direct disregard of Right to "due process"; and has been deliberately done or endorsed to cause, duress, stress, cruel and unusual punishment, by the misuse of and abuse of a legal process.

[I] The Court has justiability to dismiss the indictment with prejudice and bar and forbid any and all retaliatory acts and omissions, that may be done or endorsed, to retaliate against Mr. Bozeman for exercising the grants and entitlements contained in the Constitution and its Amendments and those of the State of Alabama as well.

Therefore

By law under Article V e, of §2 the I.A.D. agreement, after failing to prosecute all charges had and listed; causes the "doctrine of Collateral estoppel" to apply, or plain procedural due process default; and this causes loss of all jurisdiction in the case at bar.

Relief Sought

1. Bar from any further legal action in the State of Alabama.

2. Award $3,000.00 U.S. currency for the acts and omissions, done or endorsed to deprive under the Title 42 USC§ 1985(3), §1986 redress doctrine.

3. Dismiss the instant indictment with prejudice.

I do declare under the penalty of perjury by law, [28 USC §1746(2)], that a true copy was sent by U.S. Mail postage prepaid to the following:

Clerk of Circuit Court for Covington County, Alabama.
Covington County Courthouse;
Andalusia, Alabama. 36420

Additional copy for State Prosecutor.

Executed on 1-20-97

/s/ Michael Herman Bozeman
Michael Herman Bozeman
Reg# 09549-002 – A/B
P.O. Box 7007
Marianna, Florida. 32447-7007

ALABAMA JUDICIAL DATA CENTER
CASE ACTION SUMMARY
CASE: cc 95 000350.00

IN THE CIRCUIT COURT OF
COVINGTON COUNTY JUDGE: MAM
STATE OF ALABAMA VS BOZEMAN
MICHAEL HERMAN

07/18/97	TEXT	WARRANT SLIP
07/18/95	TEXT	COMPLAINT
09/14/95	TEXT	INDICTMENT
09/14/95	TEXT	WRIT OF ARREST
10/31/95	TEXT	WRIT FILED, EXECUTED AS TO MICHAEL HERMAN BOZEMAN
10/31/95	TEXT	ON NOVEMBER 8, 1995
11/08/95	TEXT	AFFIDAVIT OF SUBSTANTIAL HARDSHIP AND ORDER AP -
11/08/95	TEXT	POINTING HON. GERALD JOHNSON AS ATTORNEY
11/14/95	TEXT	REQUEST FOR DISCOVERY
11/14/95	TEXT	ANSWER TO MOTION FOR DISCOVERY

11/8 1995. Defendant arraigned in open Court and pleads Not Guilty /s/ Jerry E. Stokes, Circuit Judge.

11/9/95	Notice of Appearance
11/9/95	Plea of Not Guilty
11/9/95	Motion For Inspection and Discovery
11/9/95	Motion to Dismiss Indictment
11-20-95	Answer to Request for Discovery
2-15-96	Motion for Ailowance of Overhead Expenses

03/19/96 Order the Court hereby approves in advance $25.00 per hour in overhead expenses each billable hour deft's attorney works on this case. Request for a higher allowance is denied. /s/ MAM

4-30-96	Motion for Speedy Trial
5-3-96	Order setting hearing on June 24, 1996 at 9:00 a.m.
6-4-96	Case nolle prossed on motion of the State.

/s/ Ashley McKathan, Judge

STATE OF ALABAMA
COVINGTON COUNTY
I, Roger A. Powell, Clerk of the Circuit Court of Covington County Alabama, hereby certify that the within is a true and correct copy of the Case Action Summary on file in said office.

Witness my hand and the seal of said Court, is hereto affixed, the 5th day of June 1996.

Roger A. Powell
Clerk Circuit Court

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

UNITED STATES OF AMERICA	)	**PRESENTENCE INVESTIGATION REPORT**
v.	)	
MICHAEL H. BOZEMAN	)	**Docket Number: 95-140-N**

CHANGE(S) IN PSR

Prepared for: The Honorable W. Harold Albritton
United States District Judge

Prepared by: Jo Ann Sellers
United States Probation Officer
Montgomery, Alabama
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Montgomery, AL 36106
(334) 269-9101

Sentence Date: November 3, 1995

Offense: Count I: Conspiracy to Possess with Intent to Distribute Methamphetamine [21 U.S.C. § 846] – Not less than 5 years nor more than 40/$2,000,000 fine

Release Status: Custody of U.S. Marshal since June 16, 1995

Detainer(s): None Known

Codefendant(s): None

Related Case(s): None

Date Report Prepared:
September 15, 1995

Date Report Revised:
October 19, 1995

* * *

Other Criminal Conduct

30. On March 22, 1993, the defendant went to the home of Linda Weed, Opp, Alabama, and asked to see his ex-wife, Yvonne Bozeman. Ms. Weed advised that Ms. Bozeman was not there and the defendant began cursing and threatening her. The police were called. They asked Bozeman to leave and advised him that he would be arrested if he returned. Bozeman left at that time.

31. On December 23, 1994, the defendant called the home of Yvonne Bozeman in Opp, Alabama. He demanded to see her, which was recorded on the answering machine. Subject also threatened to come into the house and take the answering machine by force.

32. On May 29, 1995, someone cut the driver's front and back tires of Yvonne Bozeman's car which was parked in front of her residence in Opp, Alabama. Neighbors heard a hissing sound and saw a truck, identified as that of the defendant, driving away.

33. On July 6, 1995, the defendant was arrested by Opp police officers on a Harassing Communications and Criminal Trespassing warrant. During a search of Bozeman's person, a white pill bottle containing eight blue tablets was found in Bozeman's left front pocket. The pills were tested at the Department of Forensic Sciences in Dothan, Alabama. They were identified as Diazepam, a Schedule IV controlled substance.

Pending Charge(s)

34. At 12:08 a.m. on June 15, 1995, an unknown person fired into the residence of Yvonne Bozeman, 503-B East Park Avenue, Opp, Alabama. The victim was lying in bed at the time of the offense. Several rounds penetrated her bedroom wall. This same date at 2:07 a.m., an unknown person fired into the residence of Milton Williams at 2508 84 West, Opp, Alabama. Several rounds entered the residence, including the bedroom where the victim was sleeping. Additionally, the rear window of his Chevrolet Monte Carlo and his Chevrolet pick-up truck were shot[.] On June 15, 1995, at 11:00 a.m., an unknown person shot into the residence of Linda Weed, 303 Monroe Street, Opp, Alabama. The two shots fired entered a front window where a bedroom is located. The defendant was subsequently arrested and charged on June 15, 1995, by the Covington County Sheriff's Department with Intimidating a Witness.

[1] STATE OF ALABAMA,	)	IN THE CIRCUIT COURT
	)	OF COVINGTON
PLAINTIFF,	)	COUNTY, ALABAMA
	)	
VS.	)	CASE NO. CC 97-16
	)	
MICHAEL HERMAN BOZEMAN,	)	
	)	
	)	
DEFENDANT.	)	

CAPTION

This cause coming on for hearing before Honorable Jerry E. Stokes, Circuit Judge, 22nd Judicial Circuit of Alabama, Andalusia, Alabama, on the 24th day of January, 1997, at 11:45 A.M., in the Chambers of the Court.

APPEARANCES:

FOR THE STATE:	Honorable Eugenia Loggins District Attorney 22nd Judicial Circuit Andalusia, Alabama 36420
FOR THE DEFENDANT:	Honorable Mark Christensen P.O. Box 507 [2] Andalusia, Alabama 36420

REPORTED BY

BOBBIE H. NICHOLS

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[4] **MR. CHRISTENSEN:** I would also like, if possible, to – it appears that there may be some question about whether the Interstate Agreement on Detainers was properly followed and I need to do some checking on that. What would we would like to. . . .

THE COURT: Well, I'll give you leave to file any motions. . . .

MR. CHRISTENSEN: Okay.

THE COURT: Or raise any matters that you would normally. . . .

MR. CHRISTENSEN: File prior to arraignment.

THE COURT: File prior to arraignment, because of your appointment this morning.

MR. CHRISTENSEN: Thank you, sir.

THE COURT: Do we have a case number yet?

[5] **MRS. LOGGINS:** No, Your Honor, we don't. All we have is Grand Jury Number 230 through 232 from the September '96 Grand Jury.

THE COURT: Okay. The record will show that we are proceeding to an arraignment of the Defendant, "Sonny" Bozeman. I don't know if that is how you are listed on this – Michael Herman Bozeman, also known as "Sonny" Bozeman. Okay.

This case is one in which the Defendant was transported to the Covington County Jail recently and is incarcerated in Florida.

MR. BOZEMAN: I'm in Marianna now.

THE COURT: Marianna.

MR. BOZEMAN: No, sir, the other cases, I was transported here was on eight Diazipan [sic] pills.

THE COURT: But where are you now, Florida?

[6] **MR. BOZEMAN:** Yeah, Marianna, Florida.

THE COURT: Marianna, Florida. Okay. Well, the record will show that Mr. Christensen here was appointed this morning and the Court understands that he may not have had an adequate opportunity to look into your case thoroughly before being asked to face arraignment. So I am going to proceed with the arraignment, but grant leave on the record to Mr. Christensen to file after arraignment any motions or raise any matters that he might otherwise normally look into and file prior to arraignment.

So with that qualification, we will proceed to arraignment. You are Michael Herman Bozeman also known as "Sonny" Bozeman?

MR. BOZEMAN: Yes, sir.

THE COURT: Okay. You may arraign the Defendant.

[7] **MRS. LOGGINS:** This is Grand Jury Number 230 through 232, September 1996 Term.

"Count One. The Grand Jury of Covington County charges that before the finding of this indictment, Michael Herman Bozeman, also known as Sonny Bozeman, whose name is unknown to the Grand Jury other

than as stated, did shoot or discharge a firearm, explosive or other weapon which discharges a dangerous projectile, to-wit: Pistol and/or rifle, into a dwelling, to-wit: 2508 Highway 84 West, Opp, Alabama, while said dwelling was occupied by Milton Williams, in violation of Title 13A-11-61 of the Code of Alabama, 1975, and as last amended, against the peace and dignity of the State of Alabama."

"Count Two. The Grand Jury of Covington County charges that before the finding of this indictment, Michael Herman Bozeman, also known as Sonny Bozeman, whose name is unknown to the [8] Grand Jury other than as stated, did shoot or discharge a firearm, explosive or other weapon which discharges a dangerous projectile, to-wit: Pistol and/or rifle, into an unoccupied dwelling, building, railroad locomotive, railroad car, aircraft, automobile, truck or watercraft, to-wit: Chevrolet truck belonging to Milton Williams, in violation of Title 13A-11-61 of the Code of Alabama, 1975, and as last amended, against the peace and dignity of the State of Alabama."

"Count Three. The Grand Jury of Covington County charges that before the finding of this indictment, Michael Herman Bozeman, also known as Sonny Bozeman, whose name is unknown to the Grand Jury other than as stated, did shoot or discharge a firearm, explosive or other weapon which discharges a dangerous projectile, to-wit: Pistol and/or [9] rifle, into an unoccupied dwelling, building, railroad locomotive, railroad car, aircraft, automobile, truck or watercraft, to-wit: Buick automobile, in violation of title 13A-11-61 of the Code of Alabama,

1975, and as last amended, against the peace and dignity of the State of Alabama."

"Count Four. The Grand Jury of Covington County charges that before the finding of this indictment, Michael Herman Bozeman, also known as Sonny Bozeman, whose name is unknown to the Grand Jury other than as stated, did shoot or discharge a firearm, explosive or other weapon which discharges a dangerous projectile, to-wit: Pistol and/or rifle, into a dwelling and/or building, to-wit: 503 1/2 East Park Avenue, Opp, Alabama, while said dwelling and/or building, was occupied by Yvonne Bozeman, in violation of Title 13A-11-61 [10] of the Code of Alabama, 1975, and as last amended, against the peace and dignity of the State of Alabama."

"Count Five. The Grand Jury of Covington County charges that before the finding of this indictment, Michael Herman Bozeman, also known as Sonny Bozeman, whose name is unknown to the Grand Jury other than as stated, did shoot or discharge a firearm, explosive or other weapon which discharges a dangerous projectile, to-wit: A pistol and/or rifle, into an unoccupied dwelling, and/or building, to-wit: 303 Monroe Street, Opp, Alabama, in violation of Title 13A-11-61 of the Code of Alabama, 1975, and as last amended, against the peace and dignity of the State of Alabama."

THE COURT: Okay. Before I ask you to enter a plea, I also forgot to take up the [11] counsel situation. I have not really formally asked you whether you need the Court to appoint you a lawyer.

MR. BOZEMAN: Yes, sir, I need one.

THE COURT: All right. There is a form you have to fill out to that effect and I'll let you just fill it out late, because I know that you are incarcerated and we will go ahead and proceed. I asked Mr. Christensen to go ahead and see you, anticipating request for counsel to be forthcoming, but I will get you the form and let you sit down with him and get that completed before you leave.

To the indictment in this case, how do you plead?

MR. BOZEMAN: Not guilty.

THE COURT: Then a not guilty plea will be entered and this case will move on in due course to trial. And I will get that form for [12] you right now, then that will complete the arraignment. So you will stay in touch with your attorney or he will stay in touch with you and make sure you have got the means to stay in communication.

MR. CHRISTENSEN: I have got his address.

MRS. LOGGINS: Thank you, Your Honor.

THE COURT: All right.

MRS. LOGGINS: Thank you, Mark.

[Filed Feb. 21, 1997]

IN THE CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

vs. Case No.: CC-97-16

MICHAEL HERMAN BOZEMAN,

Defendant.

DEFENDANT'S MOTION TO DISMISS

Defendant, by and through his undersigned attorney, hereby moves this Honorable Court to dismiss the above-captioned case with prejudice because the State has violated the provisions of the Interstate Agreement on Detainers (IAD), Code of Alabama, 1975 as amended, § 15-9-81.

The Interstate Agreement on Detainers requires "the expeditious and orderly disposition of . . . any and all detainers based on untried indictments, informations or complaints." IAD, art. I. The United States of America is a "state" under IAD. IAD, art. II; *United States v. Mauro*, 436 U.S. 340, 354 (1978). Defendant is currently in the custody of the United States. The Covington County District Attorney had lodged a detainer against Defendant based on the charges brought against him in the above-captioned case. *See* Exhibit "A" attached hereto. On November 4, 1996, Defendant executed a request pursuant to IAD to have the detainer resolved. As a result, the Defendant was transferred to the custody of the Sheriff of

Covington County, Alabama. He was arraigned on the charges in the above-captioned case on January 24, 1997. However, the Defendant was transferred back to the custody of the federal government subsequent to his arraignment.

The IAD provides that "[i]f trial is not had on any indictment, information or complaint contemplated hereby *prior* to the prisoner's being returned to the original place of imprisonment . . . such indictment, information or complaint shall not be of any further force or effect, and the court *shall* enter an order dismissing the same with prejudice." IAD, art. IV(e) (emphasis added). Since the Defendant was returned to his original place of imprisonment prior to the trial being had on this matter, the charges must be dismissed with prejudice.

WHEREFORE, the premises considered, Defendant respectfully requests this Honorable Court to enter an Order dismissing this case with prejudice.

/s/ Mark John Christensen
Mark John Christensen
P.O. Box 507
Andalusia, Alabama 36420
334/222-7118
Attorney for Defendant,
MICHAEL HERMAN BOZEMAN

[Certificate Of Service Omitted In Printing.]

EXHIBIT "A"

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

AGREEMENT ON DETAINERS NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

Inmate Bozeman, Michael No. 09549-022
Institution USP ATLANTA, GA

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contests of each.

SHOOTING OR DISCHARGING FIREARM INTO AN UNOCCUPIED BUILDING	Covington County District Attorney Andalusia, AL
SHOOTING OR DISCHARGING FIREARM INTO AN UNOCCUPIED VEHICLE	

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the

Agreement, after you have caused to be delivered to said prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify the Inmate Systems Manager of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is

pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Warden to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Warden has not affirmatively consented to or ordered such delivery.

DATED: 10-29-1996

DATE RECEIVED:
Nov. 4 1996

Federal Bureau of Prisons
(Insert Name and Title of Custodial Authority)

BY: W. Scott, Warden
(Chief Executive Officer)

/s/ Michael H. Bozeman
Inmate's Signature

[Filed Feb. 25, 1997]

IN THE CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

Case No.: CC-97-16

vs.

MICHAEL HERMAN BOZEMAN,

Defendant.

MEMORANDUM BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Defendant has moved the Court to dismiss the above-captioned case with prejudice because of the State's violation of the provisions of the Interstate Agreement on Detainers (IAD), Code of Alabama, 1975 as amended, § 15-9-81. The Defendant was arrested on June 15, 1995 for the shooting incidents with which he has been charged in the above-captioned case. It is undisputed that the Defendant is and has been in federal custody since June 16, 1995. He was sentenced in federal court, the United States Court for the Middle District of Alabama, on November 3, 1995 in Case No. 95-140-N. The defendant's presentencing report shows that the shooting charges were still pending. Subsequently, the Defendant was charged with possession of a controlled substance in Covington County Case CC-95-350 and was transferred to the custody of the Sheriff of Covington County, Alabama. The charges in CC-95-350 were nol prossed on June 4, 1996. The Defendant was then returned to federal

custody without having been tried on the pending shooting charges.

The defendant was brought from the federal penitentiary to Covington County in the custody of the Sheriff of Covington County and arraigned on the shooting charges in the above-captioned case on January 24, 1997. However, the Defendant was again transferred back to the custody of the federal government subsequent to his arraignment.

The IAD provides that

> If trial is not had on any indictment, information or complaint contemplated hereby *prior* to the prisoner's being returned to the original place of imprisonment . . . such indictment, information or complaint shall not be of any further force or effect, and the court *shall* enter an order dismissing the same with prejudice.

IAD, art. IV(e) (emphasis added). Since the Defendant was returned to his original place of imprisonment prior to the trial being had on this matter, the charges must be dismissed with prejudice. Defendant's motion is due to be granted for the following reasons:

1. Defendant expects to present evidence at the hearing on the Motion to Dismiss that will show that on or about November 4, 1996, Defendant executed a valid request pursuant to IAD to have the detainer resolved. As a result, since the Defendant was sent back into federal custody before having his detainers resolved, the Court must dismiss these charges with prejudice. IAD, art. IV(e); *State v. Hill*, 638 So. 2d 1376, 1380 (Ala. Crim. App. 1993).

2. The Court has previously noted that a Defendant must follow a strict statutory process in order to bring the provisions of IAD into play. This is true when the process is initiated by the prisoner himself pursuant to Article III of IAD. However, the Defendant would call the Court's attention to Article IV of IAD which permits the process to be initiated by "[t]he appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending." IAD, art. IV(a). *See also People v. Browning*, 306 N.W. 2d 326, 336-337 (Mich. App. 1981). In either case, "[i]f trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment . . . such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice." IAD, art. IV(e). There are only two ways in which the Defendant could have come to be in the custody of the Sheriff of Covington County: either the Defendant made a valid request or the District Attorney requested his presence. Regardless of how it came about, it is undisputed that the Defendant has been at least twice in the temporary custody of the Sheriff of Covington County and has been returned to the custody of the federal government without having been tried on the charges in the present case.

3. The Defendant was first transferred to the custody of the Sheriff of Covington County in connection with CC-95-350. The fact that he had not been indicted on the charges in the present case is irrelevant. The IAD contemplates not only indictments and informations but also "complaints." IAD, art. I. As noted above, the present charges were pending when the Defendant was first transferred from federal custody, and they should have been resolved at that time. The State

cannot avoid the "anti-shuffling" provisions of IAD merely by claiming that there was no indictment at the time. Once the State had taken temporary custody of the Defendant, he should have been indicted and tried on all pending charges before he was returned to federal custody.

4. Even if the Court should choose to disregard the the [sic] earlier violations of IAD, the State has clearly violated the IAD by transferring the Defendant back into federal custody subsequent to his arraignment. Both Article III and Article IV of IAD require dismissal of any charges that are not tried prior to being returned to the original place of imprisonment. IAD, art. III(d) & IV(e). Article V applies to requests made by the prisoner under Article III as well as to requests made by the State under Article IV. *See* IAD, art. V(a).

> [I]n the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article II or article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter and [sic] order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

IAD, art. V(c).

5. Defendant's contentions are well-supported by the case law on IAD. In *State v. Hill*, 638 So. 2d 1376 (Ala. Crim. App. 1993), the Alabama Court of Criminal Appeals upheld an Alabama trial court's refusal to grant extradition to Tennessee. Hill had been extradited to Tennessee, but had then been returned to Alabama prior to trial. Significantly, the *Hill* case notes that "the record before us does not unequivocally establish that a detainer was placed on the

appellee by the State of Tennessee." Nevertheless, since Tennessee had custody of him and had returned him to Alabama, the court refused to transfer Hill back to Tennessee for trial. *Hill*, 638 So. 2d at 1378. The Court of Criminal Appeals affirmed, holding that Hill had waived the 120 day provision of the IAD but had not waived the anti-shuffling provision. *Id.* at 1379-1380. Thus, in the present case, even if the Defendant did not make a request under IAD, the State has violated the anti-shuffling provision of IAD. As authority, the *Hill* case cited *Webb v. Keohane*, 804 F.2d 413 (7th Cir. 1986) and *People v. Browning*, 306 N.W. 2d 326, 334-335 (Mich. App. 1981). Although the Seventh Circuit affirmed a denial of a petition for a writ of habeas corpus based on an alleged violation of the anti-shuffling provision of IAD in *Webb*, it based its decision on a finding that the petitioner had waived his right not to have been returned to federal custody prior to trial by actually requesting that he be returned. This exception does not apply to the present case because the Defendant has not requested a return to federal custody. Therefore, the general rule set forth in the *Webb* case applies: "This provision, known as the "anti-shuffling" provision, provides that a prisoner transferred pursuant to the IAD, if returned to his original place of imprisonment prior to trial, will have his indictment dismissed with prejudice." *Webb v. Keohane*, 804 F.2d 413, 414 (7th Cir. 1986). The *Browning* case is even more compelling. Browning was never housed in a state facility; he was transferred from a federal penitentiary in Indiana to a penitentiary in Michigan and taken from there to the federal building in Detroit where Detroit police officers took custody of him and transported him to the state court for its proceedings. *People v. Browning*, 306 N.W. 2d 326, 330 (Mich. App. 1981). The defendant was then transferred back to the federal penitentiary

in Indiana because his trial was not scheduled for four more months. *Id.* The Court of Appeals of Michigan affirmed a dismissal of the charges against him because "Article IV(e) of the IAD required dismissal when defendant was returned to Terre Haute before trial." *Id.* at 339.

6. In summary, IAD applies, whether or not the Defendant filed a valid request, because the State filed a detainer and obtained custody of the Defendant. The Defendant has been returned to federal custody. The Alabama Court of Criminal Appeals has cited *Browning* as authority, and the transfer back to federal custody in *Browning* was less clear than it is in the present case. Therefore, the charges must be dismissed for violation of IAD, Article IV(e).

WHEREFORE, the premises considered, Defendant respectfully requests this Honorable Court to enter an Order dismissing this case with prejudice.

/s/ Mark John Christensen
Mark John Christensen
P.O. Box 507
Andalusia, Alabama 36420
334/222-7118
Attorney for Defendant,
MICHAEL HERMAN BOZEMAN

[Certificate Of Service Omitted In Printing.]

[Filed Feb. 25, 1997]

IN THE CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

vs. Case No.: CC-97-16

MICHAEL H. BOZEMAN

Defendant.

DEFENDANT'S REQUEST FOR ADDITIONAL DISCOVERY AND MOTION TO SHORTEN TIME

Defendant, MICHAEL H. BOZEMAN, hereby requests the State of Alabama:

1. To produce and permit the defendant to inspect and copy any and all documents, correspondence, memoranda, or other written communications mentioning or relating to the Defendant, MICHAEL H. BOZEMAN, received by the State from federal authorities.

Alternatively, Defendant requests the State to stipulate that the State received a valid request for final disposition from the Defendant pursuant to Article III of the Interstate Agreement on Detainers (Code of Alabama, § 15-9-81) during November of 1996.

Also, said discovery or stipulation being necessary for a hearing on the Defendant's Motion to Dismiss, and the trial of this matter being scheduled for this week, Defendant hereby moves the Court for an Order directing the State to provide said discovery prior to trial in order

that it can be considered when the Court holds a hearing on the Defendant's Motion to Dismiss.

2/25/97
Date

/s/ Mark John Christensen
Mark John Christensen
P.O. Box 507
Andalusia, Alabama 36420
334/222-7118
Attorney for Defendant,
MICHAEL H. BOZEMAN

[Certificate Of Service Omitted In Printing.]

[1] IN THE CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,	*	
PLAINTIFF,	*	
VS	*	CC-97-16
MICHEAL HERMAN BOZEMAN,	*	
DEFENDANT.	*	

This cause coming on to be heard before Honorable M. Ashley McKathan, Circuit Judge, 22nd Judicial Circuit of Alabama, on the 27th day of February, 1997.

APPEARANCES:

For the State

Hon. Eugenia Loggins

District Attorney

Covington County Courthouse

Andalusia, Alabama 36420

For the Defendant

Hon. Mark John Christensen

Attorney at Law

Post Office 507

Andalusia, Alabama 36420

* * *

[11] (in chambers with the defendant and counsel for the parties present)

THE COURT: This is CC-97-16, State of Alabama versus Michael Herman Bozeman. Mr. Bozeman is personally present and is represented by his attorney, Hon. Mark Christensen. Mr. Bozeman has filed certain motions seeking dismissal of this action based on the Interstate Agreement on Detainer's Act.

I first knew of those motions this week, and this is my jury week, and I simply have not had an opportunity to have a hearing and deal with the motion at this point. And I have decided to handle the matter in this fashion: I am going to deny the motions related to the Interstate Agreement on Detainer's Act out of hand, without a hearing, so that he can proceed with the trial today.

However, the defendant, is not waiving his right to address that issue and he is not waiving the right to put on testimony about it and I am reserving to him his right to put on testimony about it and I am reserving to him his [12] right to raise the issue by way of post-trial motion. And I will give the matter detailed consideration by way of post-trial motion.

I simply don't have opportunity now to stop and have a hearing about the matter, but I don't want to take the issue away from the defendant. I want him to have it fairly considered and I intend to do that, but on the other hand I can't do it today.

MR. CHRISTENSEN: Your Honor, we would also ask that we – and this maybe implicit in your ruling, but we would like to have the opportunity to introduce documentary evidence as well as testimony.

THE COURT: Right. It is my understanding, first of all, that you all want to do that now; have the

hearing, put on testimony. And I have denied you that opportunity. So I don't think that you have waived anything in that respect. It is not my intention to cause you to waive anything by my proceeding today.

And what I intend to do is try this case, [13] and in the event the jury returned a verdict of guilty, then we will give the matter further consideration on a post-trial basis and we will have a hearing and take any testimony that you want to take, consider any documents, and look at it in that fashion.

(proceedings resumed in open court with all parties and counsel present) (after jury voir dire counsel approached the bench)

* * *

IN THE CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,	*	
PLAINTIFF,	*	
VS	*	CC-97-16
MICHEAL HERMAN BOZEMAN,	*	
DEFENDANT.	*	

This cause coming on to be heard before Honorable M. Ashley McKathan, Circuit Judge, 22nd Judicial Circuit of Alabama, on the 28th day of February, 1997.

* * *

[194] (jury was escorted from the library)

THE COURT: Before we began this trial I told the attorneys that I would take a further look at the Interstate Agreement on Detainer's Act issue and I am going to schedule a hearing for the 12th day of March, 1997 at 9:00 in the morning to allow you to put on any testimony that you want to about that matter and to give it the consideration that I said that I would. And I am going to schedule a judgment and sentencing hearing for the next month, the 21st day of April, 1997, at 9:00 in the morning. And [195] at this time, Mr. Bozeman, you are remanded to the custody of the sheriff.

MS. LOGGINS: Your Honor, we need to be sure that he is not sent back to Florida until this is over.

MR. CHRISTENSEN: I believe that issue is mute, [sic] Your Honor. They have already done what is – –.

MS. LOGGINS: I think it is waived, but unless he wants to go back I think we need to make an effort that he remain.

MR. CHRISTENSEN: I think that the district attorney is conceding my point.

MS. LOGGINS: I think Mr. Bozeman has waived his complaints.

MR. CHRISTENSEN: He absolutely has not.

THE COURT: Whatever has happened heretofore has happened heretofore, and whatever happens in the future you are going to have [to] house Mr. Bozeman until I can deal with these issues. And let me say in connection with that, I don't know what happened heretofore and I haven't heard any testimony on that, so I am [196] going have to wait and see how it comes down. Thank you.

(court was adjourned)

IN THE CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,	*	
PLAINTIFF,	*	
VS.	*	CASE NO. CC-97-16
MICHAEL HERMAN BOZEMAN,	*	
DEFENDANT.	*	

ORDER

The Court having represented to counsel that it would undertake to hear and determine issues raised by defendant respecting the Interstate Agreement on Detainer's Act on a post-trial basis, it is therefore ORDERED and ADJUDGED that a hearing is hereby set for the 12th day of March, 1997, at 9:00 a.m., for the Court to hear and determine such issues.

DONE and ORDERED this 28th day of February, 1997.

/s/ M. Ashley McKathan
M. ASHLEY McKATHAN
CIRCUIT JUDGE

[Filed Feb. 28, 1997]

IN THE CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

vs. Case No.: CC-97-16

MICHAEL H. BOZEMAN

Defendant.

DEFENDANT'S REQUEST FOR DISCOVERY IN SUPPORT OF POST-TRIAL PROCEEDINGS AND MOTION TO SHORTEN TIME

Defendant, MICHAEL H. BOZEMAN, hereby requests the State of Alabama:

1. To produce and permit the defendant to inspect and copy any and all documents, correspondence, memoranda, or other written communications mentioning or relating to the Defendant, MICHAEL H. BOZEMAN, received by the State from federal authorities *at any time* from June 15, 1995 to the present.

2. To produce and permit the defendant to inspect and copy any and all documents, correspondence, memoranda, or other written communications mentioning or relating to the Defendant, MICHAEL H. BOZEMAN, sent by the State to federal authorities *at any time* from June 15, 1995 to the present.

3. To produce and permit the defendant to inspect and copy any and all documents, correspondence, memoranda, investigative reports, or other written communications mentioning or

relating to the Defendant, MICHAEL H. BOZEMAN, created by the Opp Police Department on or after June 15, 1995.

4. To produce and permit the defendant to inspect and copy any and all records of the Covington County Sheriff's Department relating to Defendant, MICHAEL H. BOZEMAN, including but not limited to arrest records, investigative reports, records of being in custody, records of transfer of custody, records of temporary custody from June 15, 1995 to the present.

5. Please provide the citations of any authority (and copies of said authorities if not available in the Southern Reporter 2d) that the State contends supports the State's contention that the Interstate Agreement on Detainers (Code of Alabama, § 15-9-81) was not violated by the State.

6. Please provide copies of any documents or authorities on which the State intends to use to show "waiver" under the Interstate Agreement on Detainers.

Also, the hearing on this matter having been set for 9:00 a.m. on Wednesday, March 12, 1997, Defendant requests the Court to shorten the time for responding to the foregoing discovery requests to seven (7) days.

2/28/97
Date

/s/ Mark John Christensen
Mark John Christensen
P.O. Box 507
Andalusia, Alabama 36420
334/222-7118
Attorney for Defendant,
MICHAEL H. BOZEMAN

[Certificate Of Service Omitted In Printing.]

[197] IN THE CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,	*	
PLAINTIFF,	*	
VS	*	CC-97-16
MICHEAL HERMAN BOZEMAN,	*	
DEFENDANT.	*	

This cause coming on to be heard before Honorable M. Ashley McKathan, Circuit Judge, 22nd Judicial Circuit of Alabama, on the 12th day of March, 1997.

APPEARANCES:

For the State

Hon. Eugenia Loggins

District Attorney

Covington County Courthouse

Andalusia, Alabama 36420

For the Defendant

Hon. Mark John Christensen

Attorney at Law

Post Office 507

Andalusia, Alabama 36420

[198] (in open court with the defendant and counsel for the parties present)

THE COURT: This is CC-97-16. The case is set today to hear certain matters raised by the defendant

with respect to the Interstate Agreement on Detainer's Act. And basically Mr. Christensen it's your motion as I understand it so I will allow you to proceed.

MR. CHRISTENSEN: I subpoenaed the record's custodian from the Covington County's Sheriff's Department?

HAYWARD THOMAS

The witness, after having been first duly sworn to speak the truth, testified as follows:

DIRECT EXAMINATION

BY MR. CHRISTENSEN:

Q Would you please state your name for the court?

A Hayward Thomas.

Q Mr. Thomas, are you here in response to my subpoena for a record's custodian?

A Yes, I am.

Q Are you in fact the record's custodian for the Covington County Sheriff's Department?

[199] A Jail Administrator.

Q And the records that you have brought with you do they refer to Michael Herman Bozeman?

A Yes, sir.

Q And these records are kept in the normal course of business out there?

A Yes, sir.

Q Can I take a look at these?

A Yes, sir.

Q Let me ask you about this record first. Could you identify for us please what that is?

A That is a copy of Mr. Bozeman's booking cards, it the jail records.

Q From here in Covington County?

A Yes.

Q What was the charge that was brought against him?

A Intimidating a witness; federal.

Q What was the date on that?

A 6/15/95.

Q So he was taken into custody on 6/15/95?

A Yes, sir.

Q And he was to be brought, or there was a [200] federal hold placed on him at that time?

A Yes, sir.

Q And these are copies?

A Copies, yes sir.

Q And they are true and accurate copies?

A Yes, sir.

MR. CHRISTENSEN: I would like to admit this as Defendant's exhibit 1.

THE COURT: It is admitted.

(received into evidence as Defendant's exhibit 1)

Q Do you have any records on Mr. Bozeman from November of 1995?

A No sir, I don't see any in here.

Q Is it possible that there are some?

A Yes sir, it is possible.

Q So if I were to represent to you that Mr. Bozeman was transported from federal custody to Covington County on November 8, 1995, you would have no information to contradict that?

A No, sir.

Q Let me ask you about this document. Could you identify that for us please?

[201] A That is another prisoner jail record.

Q What is the date on that?

A 1/23/97.

Q What does it indicate?

A It shows on here that he was taken into our custody on 1/23/97 and booked into our facility.

Q Does it tell you where you took custody from?

A I believe the federal marshals. It says transported from federal prison for court, brought here for court and then released back to them 1/24/97.

THE COURT: Just a second. When was he returned; I'm sorry?

WITNESS: 1/24 of '97.

THE COURT: Okay.

Q What were the charges there?

A Shooting into a dwelling.

MR. CHRISTENSEN: We move to have this admitted as Defendant's exhibit 2.

THE COURT: It is admitted.

(Defendant's exhibit 2 received into evidence)

[202] Q If you would please identify the document that you are now holding?

A This is a release authorization from the federal prison. Release date was 2/26/97, released to Covington County Sheriff's office.

Q So Covington County again took custody from the federal authorities on 2/27/97?

A Yes.

MR. CHRISTENSEN: Move to have this admitted as Defendant's exhibit 3.

THE COURT: It is admitted.

(received into evidence as Defendant's exhibit 3)

Q Could you identify these forms that are stapled together there that begins, I believe, in transit data form?

A Yes, it's just an in-transit data form from the Federal Bureau of Prisons.

Q What other documents that are stapled together with that?

A That is his clearance and separation data there. I can't read half of it, it is not that clear. It come from them. It shows 1/24/97, [203] 2/26/97.

Q In other words it shows the transfers of custody?

A Yes, sir.

Q Okay.

A That is Bozeman and Bedsole picked him up.

Q This is the form that is necessary for picking him up?

A Right.

Q And it states that this is as an IAD form?

A Interstate Agency Authority.

Q And it states that there is a detainer against him, doesn't it.

A On the front side it says Detainer, Covington County, Alabama, the sheriff's office, discharging a firearm into a building and vehicle.

MR. CHRISTENSEN: Move to have this admitted as Defendant's exhibit 4.

A This here is just his medical for his transportation.

THE COURT: Before you get to that, number 4 is admitted.

[204] (Defendant's exhibit 4 received into evidence)

Q And just to reiterate, as far as you know it is possible that he was also brought into the custody of Covington County Sheriff's Department in November of '95?

A Yes sir, it is possible. I don't have a record of it.

Q Ms. Loggins may have some questions of you.

MS. LOGGINS: No questions.

EUGENIA LOGGINS

The witness, after having been first duly sworn to speak the truth, testified as follows:

DIRECT EXAMINATION

BY MR. CHRISTENSEN:

Q Please state your name for the record?

A Eugenia Loggins.

Q And your occupation?

A I'm the District Attorney for the 22nd Judicial Circuit.

Q That includes Covington County, Alabama?

A That's all it includes, yes sir.

Q And were you the District Attorney for [205] Covington County for the 22nd Judicial Circuit in June of 1995?

A Yes, I was.

Q And continuously from that time up to the present?

A Yes.

Q Are you familiar with the circumstances involving the arrest of Mr. Bozeman in June of 1995, either personally or through your records of having prosecuted the case?

A Let me get the rest of this file. There have been two cases so I'm not sure about which. I apologize. . . . The only thing that I know about the June, '95, arrest was that he was arrested by the federal authorities. I subsequently learned that that was June of 1995, but we didn't receive any paperwork regarding that. I am just going by word of mouth aware that he was arrested by the federal authorities on drug charges at that time.

Q The charges that Deputy Thomas just talked about, the intimidating a witness charges, were those charges involving the same incident that [206] ended up being CC-97-16?

A Not that I am aware of. As I understand that was a separate federal charge that they did not pursue. And I frankly have no idea what the facts were, but from what I have gathered during the last trial it was not necessarily involving the same facts. All I know is that they thought about pursuing that and frankly I can't tell you honestly who that was suppose[d] to be.

Q The State's primary witness at the trial of the case was a Jeffrey Anderson. Are you familiar with when he was interviewed by Bill Shaw from listening to the tape?

A In this case? In case number 97-16?

Q Yes.

A I have a memorandum from Bill Shaw which indicates that it was on June 19th. Somewhere around June 19th, maybe the 20th.

Q But he interviewed Mr. Anderson?

A Latter part of June of '95 regarding this shooting incident.

Q Did he subsequently do any further [207] investigation, further interviews with Mr. Anderson or anything further?

A Not that I am aware of, other than he searched the vehicle.

Q That was all in the same time frame of June of '95?

A Yes, that's all I am familiar with.

Q Mr. Bozeman was indicted on these charges in October of last year, or September?

A We presented this case to the September Grand Jury, September '96 Grand Jury as a special. He had not been charged. They had done an incident offense report and I was contacted by one of the victims to find out why nothing had been done about the case. And I called the Opp Police Department and they said, oh, yeah. Apparently they had just forgotten it in light of the federal charges, and all of that was going on. And so they brought me a case file and so then we presented it, contacted the victims to see if they wanted to proceed

with it. And they indicated that they did and so we .presented it to the grand jury in September of [208] '96 and he was indicted at that time.

Q But as far as, you know, other than talking with these witnesses about bringing the charges forward, there was no further investigation that had been done since June by the Opp Police Department?

A No, it appeared that they had completed the investigation and when they brought us the case file we proceeded on the case file, although they had never arrested him on it.

Q And there was another case that was brought against Mr. Bozeman, CC-95-350, is that correct?

A That had been an earlier case, yes. He was indicted in that case in September of 1995, and that case had been pending at the time he was arrest[ed] by the federal authorities.

Q So he was in federal custody?

A He later became to be in federal custody.

Q Can you identify this document for me please?

A Yes. We had asked that he be brought back. Let me get my copy of it, I think that is the copy I provided to you.

[209] Q Yes, actually it is a copy of the copy?

A A copy of the copy of the copy. But it still looks to be accurate. He was indicted in September and so then we found that he was in federal custody. He was indicted in September of '95. We found out that he was in federal

custody in Montgomery; he was actually in a Montgomery County Jail. And so he was brought back. We filed a writ to have him brought back, to have an attorney appointed, and an attorney was appointed according to my notes on November 8, '95.

Q And that is this document, a copy of that writ?

A That is part of it.

Q That is a prosecutor's certification and here is that other part?

A That is the other part, yes.

THE COURT: He was brought back and counsel was appointed in November of '95?

WITNESS: Yes sir, that is on a different case.

THE COURT: CC-95-350?

WITNESS: Yes, sir. At that time it was [210] September '95 Grand Jury number 147, which is the number that appears on this copy. That was on another drug charge that happened. The drug charge incident happened in May of '95, possession of Diazepam.

Q And at the time that he was transported, appears to be November 8, 1995, he was a federal inmate at that point?

A Well, he was being held in the Montgomery County Jail in federal custody. Now what his status with federal authorities was at that time, I can't tell you.

THE COURT: When was that?

WITNESS: This was in November of '95.

MR. CHRISTENSEN: We move to admit this as Defendant's exhibit 5.

THE COURT: Both documents?

MR. CHRISTENSEN: Ms. Loggins says that they belong together?

WITNESS: Well, we had them stapled together.

THE COURT: It is admitted.

(Defendant's exhibit 5 received into [211] evidence)

Q Would you please identify this document for the court?

A This document, October 10, 1996, is our request for a detainer to be placed on Mr. Bozeman for the charges in case number 97-16, which we sent to Atlanta on that date.

Q So it purports to be signed by your administrative assistant?

A Yes, Jean Scott. I recognize that signature.

Q And this was by your authority that she was requesting this detainer?

A Yes.

MS. LOGGINS: We move to have this admitted as Defendant's exhibit 7.

THE COURT: It is admitted.

(received into evidence as Defendant's exhibit 7)

Q Another letter that appears to request temporary custody of Mr. Bozeman?

A Yes, he was moved from – we understood that he was moved from Atlanta. Subsequently to that we got a response back from them saying that [212] the detainer had been filed for him, against him at our request on 10/29/1996, telling us that he was scheduled for release in January of '98 and that they would notify us again sixty days before his release. But after we got that notice back from them we understood that he had been transferred to Marianna, Florida. So then we sent this letter to Marianna, Florida, in January of '97, that's correct. And I do recognize Jean Scott's handwriting.

THE COURT: You want that admitted?

MR. CHRISTENSEN: Yes, I'm sorry. We are up to number 8.

THE COURT: I think we skipped 6, so I will make it number 6.

(Defendant's exhibit 6 received into evidence)

THE COURT: Was he returned in response to either one of those?

WITNESS: He was not returned in response to the letter to Atlanta. He was returned in response to the letter, the January 8th letter. We filed subsequent forms then, forms 6 and 7. [213] They call them IAD forms 6 and 7. And we filed those forms and that is when he was brought back and arraigned.

THE COURT: In January?

WITNESS: In January '97.

Q This is an IAD form?

A Yes, this is IDA [sic] form 7.

Q In which you agreed to take temporary custody of a federal inmate?

A Yes.

MR. CHRISTENSEN: We would like to have that introduced also.

(Defendant's exhibit 8 received into evidence)

A And these are the forms that they faxed to us.

Q That they requested that you fill these out?

A Yes, they requested that we fill those out.

Q What happened in CC-95-350?

A CC-95-350, he had already I believe at the time – after he was arraigned he filed a Motion for a Speedy Trial and we brought him back in June of '96 and agreed to nol pros because he was serving this federal sentence and this was, [214] frankly, penny ante compared to what he was doing there.

Q So case CC-95-350 has been dismissed?

A Been dismissed, yes.

Q So basically if I just run through the time line and I am just going to ask you whether you agree that this is accurate. Mr. Bozeman was arrested June 15, 1995; he came under federal custody at some point thereafter?

A Yes, he was arrested on federal charges in June of '95.

Q He was transferred back to Covington County, November 8, '95; and then returned to federal custody?

A Yes.

THE COURT: November 8, '95?

WITNESS: Yes.

Q A detainer was placed on him in October of '96 by Covington County?

A Yes, but it was on a different charge.

Q A different charge?

A Yes.

THE COURT: October of '96?

[215] **WITNESS:** Octobmer [sic] of '96.

Q He was transferred back to Covington County January 23, '97?

A Twenty-fourth I think, but he might have been brought back on the 23rd. He was here on the 24th.

Q And then returned to federal custody?

A Yes.

Q And then he was brought back in February of 1997?

A Yes.

Q And remains here and present here in court today?

A Yes, he does.

Q Remains in the temporary custody of Covington County?

A Yes.

Q But he is a federal inmate. You have just temporary custody of him from the federal authorities?

A That's correct.

MR. CHRISTENSEN: Thank you.

THE COURT: All right Ms. Loggins, you [216] want to testify?

MR. CHRISTENSEN: Ask yourself some questions.

THE COURT: You can say what you want to say or you can ask yourself questions. But if you ask yourself questions, but if you ask yourself questions, don't ask yourself repeating questions?

WITNESS: I think mine would be in the nature of argument, Your Honor. I don't mind arguing it at this point in time.

THE COURT: If you have said all you want to say by way of testimony come on down and then when we finish the hearing you can both say whatever you want to by way of argument.

WITNESS: I will say those are all of the documents that we have received – well, they are not all the documents that we received from Mr. Bozeman. We did receive another document from him, which was filed on January 20, of 1997, which would have been after CC-95-350 had been dismissed. Now at the time 95-350 was dismissed the State had no pending charges [217] against Mr. Bozeman.

Although an incident offense report had been filed in which the case which later became 97-16, which is at issue, there were no charges. There was no complaint; no indictment; no arrest warrant. So frankly it existed only as an investigative report. But in January of 1997, which would have been after his indictment in 97-16, and before he was brought back on the 23rd, we did receive, which apparently was after he was notified that we had placed a detainer on him, we received a paper from Mr. Bozeman asking that everything be dismissed. That we had violated the Interstate Agreement on Detainer's, which appeared to be a request to depose [sic] of everything.

I believe the court has a copy of this. It was in some file, it was filed January 24, 1997. And I don't know what file it was in because it doesn't have an action number. But it is dated October 9, 1996, which apparently would refer it to the case number 97.

THE COURT: This one is dated 1/20/1997?

[218] **WITNESS:** Yes, sir, it is dated 1/20/97 but he dates it on page 1, October 9, 1996, which apparently then referred to case number 97-16. So we would offer that or call that to the court's attention, which is the only request that [we] have received from Mr. Bozeman. I don't have anything from November.

If there are no other questions I guess that is it.

THE COURT: Any questions, Mr. Christenson?

MR. CHRISTENSEN: No.

THE COURT: Unless you have something further, Ms. Loggins, you may come down.

MR. CHRISTENSEN: Call Michael Herman Bozeman.

MICHAEL HERMAN BOZEMAN

The witness, after having been first duly sworn to speak the truth, testified as follows:

DIRECT EXAMINATION

BY MR. CHRISTENSEN:

Q Would [you] please state your name for the record?

A Michael H. Bozeman.

[219] Q Mr. Bozeman, you have heard the testimony that you were arrested and on June 15, 1995, is that correct?

A Yes, sir.

Q Were you then transferred to federal custody or perhaps were you arrested by the Sheriff's Department or police department?

A I was arrested by the Sheriff's Department and Alabama DEA.

Q And when were you transferred to federal custody?

A I was arrested that day, the 15th, and they transported me the next day to Montgomery and turned me over to the U.S. Marshal.

Q So from June 16, 1995 you were in federal custody?

A Yes, sir.

Q Did you plead guilty to some of the federal charges that were brought against you?

A Yes, sir I pled not guilty to intimidating a witness and I plead guilty to methamphetamines.

Q Were you sentenced on those charges?

A Yes, sir.

[220] Q What was the date of your sentence?

A The date of any sentence was was [sic] November 3, 1995.

Q So you began serving your sentence then on November 3, 1995?

A Yes, sir.

Q Have you been in continuous federal custody since that time?

A Yes, sir.

Q Have there been some temporary transfers of custody since you began serving your federal sentence?

A Yes, sir.

Q When was the first one that you can recall?

A November the 8th I was brought from Elmore County Jail to Covington County Jail and I was arraigned and appointed a lawyer and returned the same day.

Q The same day?

A Yes, sir.

Q But during that time you were in the temporary custody of the Covington County Sheriff's Department?

[221] A Yes sir. As a writ; seventy-two hours I believe.

Q When was the next time that you had a temporary transfer from federal custody?

A It was in January.

Q Of this year, '97?

A Yes, sir.

Q What happened?

A I was brought from Marianna here one day and the next day I was arraigned and a lawyer appointed to me and I was returned the same day.

Q You were returned to federal prison in Marianna?

A Yes, sir.

Q And when did you come up here now this last time?

A I can't remember exactly the date. It was about two or three weeks ago. I was brought here for a hearing or a trial.

Q Do you recognize these documents that I am showing to you?

A Yes, sir. That is the presentencing, that's [222] with the federal. My presentencing, it tells the custody and when the marshal had me.

Q Do the dates that it relates there confirm the dates that we have just run over?

A Yes, sir.

Q Arrest date of the 15th, in federal custody since the 16th of June of '95?

A Yes, sir.

Q Sentencing date?

A Sentencing date, Count I conspiracy to possess with the intent to distribute methamphetamine.

Q And the date of that sentence, was that November 3, '95?

A Yes, sir.

Q Could you tell me what the second page is there?

A This was charges.

Q This is also from your presentencing report?

A Yes, sir. Which the date is wrong on the ones with the pills there. It says July 6, I was already in custody with the federal. It was June 6th, is with the eight diazepam pills.

Q Looking at item number 34, where it says [223] pending charges?

A It says pending charges. It tells when I was arrested; when the shooting was suppose[d] to have been done; and I was arrested by the Covington County Sheriff's Department with intimidating a witness.

Q So the arrest of intimidating a witness was related to these shooting charges?

A Yes, sir. I was originally arrested on intimidating a witness. And when Bill Shaw brought the witnesses to

Montgomery and all, I don't know what happened on it, but anyway I pled guilty to what I was getting guilty of which was methamphetamines.

THE COURT: When you say shooting charges are you taking this talking about this same business?

MR. CHRISTENSEN: Yes, sir.

THE COURT: You claim that the intimidating a witness charge arose out of the the [sic] same transaction as – –.

MR. CHRISTENSEN: Yes, that is what we claim, Your Honor. And we had move to admit [224] these documents as Defendant's exhibit 9.

(Defendant's exhibit 9 received into evidence)

Q Mr. Bozeman, at any time during these transfers of temporary custody, did you ever ask to be sent back to the federal authorities?

A No, sir.

MR. CHRISTENSEN: That's all I have.

MS. LOGGINS: No questions.

THE COURT: You can come down.

MR. CHRISTENSEN: That's all of the testimony we intent [sic] to put forward, Your Honor. Anything else that we have is in the nature of argument.

MS. LOGGINS: The has [sic] State has nothing.

THE COURT: Ms. Loggins, is the contention accurate – I don't know if it makes any difference or not, I

haven't researched this but so I will know what I'm researching when I'm researching, does the State agree that the present charges arose out of this same transaction as the intimidating a witness charge that was nol prossed?

[225] **MS. LOGGINS:** I don't know. I didn't know that they existed until we were in the middle of this trial.

THE COURT: Didn't know what existed?

MS. LOGGINS: That he had ever been charged with a federal offense of intimidating a witness.

THE COURT: So that was the federal charge, the intimidating a witness, or one of the federal charges?

MR. CHRISTENSEN: Yes, sir.

THE COURT: The prior county charge was what?

MS. LOGGINS: The prior county charge was a drug charge, possession of diazepam. I never knew that he had been charged with intimidating a witness.

THE COURT: Was the federal charge nol prossed?

MR. CHRISTENSEN: It was not carried forward. Anyway they dropped it.

THE DEFENDANT: No, sir. The judge up there asked the witness they brought up there, [226] Mr. Shaw, the one that come up there, where was the gun. No gun was found when I was arrested, so they just automatically – and the next news I know my lawyer was asking me, Mr. Bozeman we now – they took stood up that same

day, Judge, and said now we have two informants that Mr. Bozeman was buying and possessing methamphetamines. And I was took over there, kept in the marshal's custody. And I had until August 10th to either plead guilty or go to trial the 15th. I went forward August the 9th and pled guilty for methamphetamine.

THE COURT: I think I follow the chain of events now. At one point in some argument at some point in this thing I thought somebody said that at some point the defendant had requested to be returned to federal custody?

MS. LOGGINS: It is the defendant's Motion to Dismiss that was filed. It is on February 21, 1997, and there is a form attached.

MR. CHRISTENSEN: I believe that the form that is attached merely acknowledges that his being notified that there has been a detainer [227] placed against him.

THE COURT: Okay. You can say anything that you want to now.

MR. CHRISTENSEN: The cases that the district attorney has cited in passing, all deal with the speedy trial aspect of the IAD, which is Code of Alabama section 15-9-81. All of those cases deal with Article 3 requests by a prisoner in one jurisdiction asking that the detainers in other jurisdictions be removed.

The time frame on that has not yet run. Our claim is not based on a violation of Article 3. Rather our contention is that the district attorney has violated Article 4. Article 4-A gives the appropriate officer [of] a jurisdiction

in which an indictment, information or complaint is pending to have a prisoner brought to them. In other words, Article 3, the inmate is the one who initiates the procedure. Under Article 4 it is the prosecutor who initiates the procedure.

Most of the cases deal with Article 3, and in fact as the court pointed out to me, there are very strict requirements that the inmate [228] follow the letter of the law in holding the State to Article 3. By the same token the State needs to also obey the law here. We are a nation of laws and neither side can violate it.

Under Article 4-A the prosecutor is given the power to obtain temporary custody. Article 4-E states that if trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner being returned to the original place of imprisonment pursuant to Article 5-E, such indictment, information or complaint shall not be of any further force or effect and the court shall enter an order dismissing the same with prejudice.

Article 5-E states that at the conclusion of a trial the inmate is to be returned to the original jurisdiction as quickly as possible.

Our contention is two-fold. First, since Mr. Bozeman had begun serving his federal sentence on November 3, 1995, by bringing him to Covington County, having temporary custody of him, the State was thereby obligated to bring [229] all pending indictments, information, complaints against him to trial before returning him. He was returned that same day to federal authorities.

Our contention is that since he had been arrested on June 15, charged with intimidating a witness, we are claiming that the shooting incidents, as indicated by his presentencing report, are the same as the charges that eventually ended being CC-97-16. That those were pending charges. The testimony that we have heard today was that there was nothing else done from that point. That those charges were just sitting there. We believe that it violates the whole purpose of the Interstate Agreement on Detainer's to allow charges to sit around and have some taken care of and then bring some others later after those have been disposed of. The case law seems clear that the purpose of IAD is to avoid that certain situation.

We are saying that when CC-95-350 was dropped, when he was put back into federal custody, probably even before it was dropped, [230] that these shooting charges should also have been dismissed. That is our first argument.

I believe that our second argument is completely unsalable [sic]. It is uncontested that Covington Covington [sic] placed a detainer on Mr. Bozeman in October of 1996. He was subsequently transferred from federal custody to the custody of the Covington County Sheriff's Department in January of 1997. He was then transferred back again to federal custody without having had trial on his indictment. He was then brought back here again on the same charges.

Article 4-D states that nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph A hereof.

The State has the burden to show that there was any waiver. They have shown absolutely nothing. The cases that have been cited in my motion state that an inmate can waive those rights but it has to be explicit. In the case of State versus Hill, the Alabama case, which I [231] cited in memorandum brief, it is very clear that the burden is on the State to show that there was a waiver. The State did not in that case; the State has not in this case.

The language of Article 4-E is mandatory. Says that the court shall enter an order dismissing the same with prejudice. We would ask the Court to abide by Article 4-E of the Interstate Agreement on Detainer's and dismiss the charges against Mr. Bozeman.

MS. LOGGINS: Your Honor, as to the first argument. The Interstate Detainer says that, and we disagree; we believe that we should be under Article 3 because the filing under which we are here, that brought us to court, the defendant's Motion to Dismiss, specifically said that he executed request pursuant to IAD to have his detainer resolved.

So his allegation is that he asked to be brought back. That he was the one that initiated it. He wanted to come back and have them resolved. So when he does and all of the paperwork indicates that that would be the [232] opinion because of form number 7, which the defense has offered into evidence, specifically states there is a form that is used when a prisoner requests to be brought back.

So we believe that we should be arguing this case under Article 4. You can't say that I requested it under Article 3 but then you didn't comply with Article 4; they are apples and oranges. A defendant can be asked to be

brought you then you jump through certain hoops, or the State can request that they be brought back and can initiate it and there is a separate form that has to be filled out for that when the State requests it. And then you jump through certain hoops for that.

As to the first argument that this should be dismissed because it is the same as the federal sentence. Well, obviously we are a different sovereignty and whether or not the feds at one time had charged him with intimidating a witness under the same circumstances, which is not proven, that is just an innuendo here. There is no evidence that it [233] was charged based on that; solely on that.

But if we assume the very worst, that these are exactly the same set of facts, but they are a federal charge and a state charge, then we are not barred from prosecution. But it says whenever a person has entered upon a term of imprisonment and it is undisputed that he had not yet entered under a term of imprisonment. He had charges pending in the federal court system, one of which was intimidating a witness, all of which were deposed [sic] of with his plea. And then he began serving his sentence in November of 1995.

So that is mute [sic]. There was no charge pending. Thereafter, when he was brought back, if there was some argument about when he was brought back on our drug charges, this case again was not pending. There was no complaint, which doesn't mean a gripe, it a means a formal application for a writ of arrest. That didn't exist. Nothing existed except an incident offense report regarding what later became case number 97-16.

[234] So the first argument that because these were as the same things as the federal sentence it should have been dismissed when he was brought back, because it existed, it didn't exist when he started serving his term in federal court. That federal charge had already been dismissed.

Now as to the second argument, we are arguing Article 4, but his petition says that he filed a request to be brought back. And specifically attached the document of November 4, 1996, as the exhibit, which does not comply with the request under Article 3, the requirements for the defendant to benefit from the requirements of the Interstate Agreement on Detainer's.

If he considers the favors he executed on 1/20/97, again to be his request, to have his case disposed of, which it appears to be. It says, complaint or request for declaratory judgment, etc, etc, can also be construed to be a request to have this disposed of. Again, it does not comply with Article 3, the Interstate [235] Agreement on Detainer's.

So although our cases revolve around – the Alabama cases that we have cited to Your Honor do stem from a later argument that the defendant wasn't tried within the time-line. It also goes to say that in every case the court talks about if you don't comply with all the requirements, and you have to prove that you have met all the requirements of the Interstate Agreement on Detainer's, then you can't benefit from the penalties imposed. And there is a penalty in Article 3 which says that you are not suppose[d] to take them back and forth.

But it is his burden to prove that he met all of the requirements to benefit from the penalties, which are horrendous; an absolute dismissal. So we had cited Your Honor to an Alabama case, Turner versus State, 584 Southern 2nd 925, where the facts of that case were very similar to the facts here. Although again, the defendant was by this time complaining that he had not . . Motion to Dismiss . . . He eventually argued the speedy trial motion in [236] that.

But specifically it just said, most of the argument is that the State's failure to comply with the Interstate Agreement on Detainer's. And in that case it says, again, that he did not fill out the proper paperwork to invoke Interstate Contact [sic] on Detainer's. The district attorney in Houston County in that case did as we did, filed forms 6 and 7, which are the exact same forms that we filed, to bring him back.

And it says that it was his responsibility to show that he had properly requested for it to be invoked. And as they cite over and over and over again, a prisoner seeking to benefit from the relief provided by the agreement must meet the burden that he has complied with the requirements of the agreement. Which the defendant has failed to do in this hearing.

So our argument is that the defendant says he asked to be brought back, he has failed to prove that he filed the necessary papers, all the documents that had been admitted into evidence that appear to be requests, do not [237] comply with the requirements of Article 3. And therefore he can't expect to benefit by having his case dismissed.

MR. CHRISTENSEN: In her testimony, the district attorney admitted that a detainer had been placed on Mr. Bozeman. She testified that subsequent to their initial attempts to get custody of him in order to try him on the charges on the basis of which the detainer was lodged, that they did receive a request under Article 3.

Even if we were under Article 3, Article 3-D, in words that are nearly identical [to] those found in Article 4, it says if trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint, shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

It is really beside the point. She stated that they didn't have that. It is true that the [238] prisoners need to follow the statutory, procedure set forth in terms of who they notified and so on. Cases like Turner have to do with the speedy trial aspect. It is not analogous to this at all except for the fact that it states that the Interstate Agreement on Detainer's needs to be followed by the letter of the law.

Mr. Bozeman was brought here pursuant to Article 4. The district attorney initiated all of this. Prior to trial we had attempted or attempted to have a hearing at which time we discussed this and I made it clear that we were proceeding under Article 4. I believe that the original motion did cite to Article 3, but this was several weeks ago and now that the State has had notice that we were proceeding under Article 4, the State is the one that has to prove any sort of waiver and have not done so.

THE COURT: All right, I think I understand what y'all are talking about. I will take the matter under advisement and try to get out an order before sentencing next month. In [239] the meantime, there are possibilities for settling the issue and if you all want to settle it in the meantime you are certainly welcome to do that.

And I will put out an order when I figure it out.

(hearing was adjourned)

[Filed in the Circuit Court of
Covington County, Alabama]

DEFENDANT EXHIBIT #ONE

PRISONER'S JAIL RECORD

S.S.NO. 420-58-5121 **No.**_____

NAME Bozeman, Michael Herman

DATE 6-15-95 **TIME** 8:45 p.m.

ALIAS Sonny **ADDRESS** Rt. 2 Box 134A Opp, AL. 36467

AGE 50 **RACE** W **SEX** M **EYES** Haz **HAIR** Gry

HEIGHT 5-8 **WEIGHT** 151 **DATE OF BIRTH** 3-08-45

PLACE OF BIRTH Covington, Co.

SCARS OR MARKS Tatoo woman face right shoulder

ARRESTING OFFICER 2309 Anderson

ARRESTING AGENCY C.C.S.O.

OFFENSE Intimidating a witness (Federal)

TELEPHONE NO 493-7642 **STATUS** Divorced

SPOUSE OR NEXT OF KIN Michael Andrews

SENTENCE BEGINS_____

SENTENCE EXPIRES _____

HOLD FOR _____ **BEHAVIOR** _____

TIME ALLOWED-GOOD BEHAVIOR _____

HOW RELEASED Claude Cosey DEA

DATE 6-16-95 **TIME** 11:00

RELEASING OFFICER Jones/Fowler

DRAFT BOARD & CLASSIFICATION _____

ENTERING R/I PRINT _____

RELEASING R/I PRINT _____

REMARKS: There is a Federal hold – Do not release him to anyone except Tony Calderaro or Claude Cosey!!

_____

DEFENDANT EXHIBIT #TWO

PRISONER'S JAIL RECORD

S.S.No. 420-58-5121 **No.**_____

NAME Bozeman, Michael Herman

DATE 1-23-97 **TIME** 2:31 p

ALIAS Sonny **ADDRESS** Rt. 2 Box 134A Opp, AL.

AGE 50 **RACE** W **SEX** M **EYES** Haz **HAIR** Gry

HEIGHT 5'8" **WEIGHT** 149 **DATE OF BIRTH** 3-8-45

PLACE OF BIRTH Covington Co.

SCARS OR MARKS Rt. arm

ARRESTING OFFICER D. Rogers

ARRESTING AGENCY Cov. Co. S.O.

OFFENSE Shooting into a Dwelling

TELEPHONE NO _____ **STATUS** Divorced

SPOUSE OR NEXT OF KIN _____

SENTENCE BEGINS _____

SENTENCE EXPIRES _____ **HOLD FOR** _____

BEHAVIOR _____

TIME ALLOWED-GOOD BEHAVIOR _____

HOW RELEASED Back to Federal Pen **DATE** 1-24-97
TIME 12:21

RELEASING OFFICER Hoyle

DRAFT BOARD & CLASSIFICATION _____

ENTERING R/I PRINT _____

RELEASING R/I PRINT _____

REMARKS: Transported from Federal Prison for Court.

_____

DEFENDANT EXHIBIT #THREE

RELEASE AUTHORIZATION

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

Inmate Name
Bozeman, Michael

Register No.
09549-002

Institution
FCI, Marianna

Date
2-20-97

Release Date
2-26-97

Method
IAD

Detainer
[X] Yes [ ] No

Custody Will Be Taken by:
Covington Co. Sheriff's Office 200 Hillcrest Dr. Andalusia, AL 36420

Certification: I certify that this release is in accordance with applicable and controlling rules, regulations and statutory provisions. I have personally reviewed this inmate's Judgment and Commitment File, and determined that there is no information that would prevent release by the method stated above. All Judgment and Commitment Orders, U.S. Parole Commission Warrants, Notice of Actions, Good Time Documents, and all detainer information have been personally reviewed by me.

Name/Title
Michelle Clower, ISM

Signature
/s/ Michelle Clower

Date
2/26/97

Apache

Thumbprint

THIS INMATE IS NOT TO BE RELEASED WITHOUT THE WRITTEN PERMISISON OF THE WARDEN, FCI MARIANNA, FLORIDA

RELEASE ACTION

Identified by:

Released by:
[Illegible]

Funds Paid by:

Date of Release:
2/26/97

Time of Release:
11:[Illegible]

RECEIPT OF AGENT TAKING CUSTODY

I have received the above named prisoner, together with personal property and funds in the amount of
$_____

Name/Title
Horace Waylon Griggs
Deputy Sgt

Signature
/s/ Horace Waylon Griggs

Date
2-26-97

Location
Covington Co. Ala.

DEFENDANT EXHIBIT #FOUR

FEDERAL BUREAU OF PRISONS
IN-TRANSIT DATA FORM

MNAM1 535*08 * * 02-20-1997
PAGE 001 OF OO1 * * 09:40:54

NAME:	BOZEMAN, MICHAEL H
REGISTER NO:	09549-002
RACE/SEX.:	WHITE / MALE
RESIDENCE:	OPP, AL 36467
DOB (AGE):	03-08-1945 (51)
ETHNIC:	OTHER THAN HISP
RSP OF:	MNA A-DES
DESTINATION:	
ESCAPE:	NONE
VIOLENCE:	5 YRS SERIOUS
LEVEL/CUSTODY:	MEDIUM/IN
PROJ REL DATE:	01-24-1998
DETAINERS:	YES
NOTIFICATIONS:	
OFFN/CHG RMKS:	CPWID METHAMPHETAMINE 36 MONTHS (REDUCTION)
DETAINER RMKS:	DETAINER: COVINGTON CO., ANDALUSIA, AL SHERIFF OFFICE DISCHARGING A FIREARM INTO A BUILDING AND VEHICLE.

** NOTE ** CONFIDENTIAL CMC AND SEPARATEE HARDCOPY DATA IS ATTACHED

****

BOZEMAN
MICHAEL H O9549-002 09549-002 BOZEMAN
W/M/O/03-08-1945
HT/508 WT/149 HR/GY EY/HL
CUSTODY/IN [PHOTO OMITTED IN PRINTING]
LIST ANY NON-ROUTINE SECURITY NEEDS:
USE ROUTINE SECURITY MEASURES FOR AN INMATE WITH IN CUSTODY AND MEDIUM SECURITY LEVEL.

NAME OF NEAREST
RELATIVE OF INMATE: Michael Bozeman – Son

CITY AND STATE
OF RELATIVE: Opp, AL

ADDITIONAL COMMENTS:
USE CAUTION!!!
Inmate Bozeman has no priors and no escapes. He has a serious violence, shooting into a dwelling to intimidate witness, menacing, intimidation, with a weapon, harrassment, criminal trespassing and harrassing communications.
USE EXTREME CAUTION!!!!!!

****

NOTE: STATEMENT TO TRANSPORTING OFFICER: "THIS IS A CONFIDENTIAL DOCUMENT & THE SECURITY OF IT MUST BE MAINTAINED"

TRANSPORTING OFFICER:___ AGENCY:___

PREPARED BY: /s/ P. Donalson
P. DONALSON

TITLE: CASE MANAGER DATE:2/20/97

BP-S564.051 CDFRM
IAD FORM VI – EVIDENCE OF AGENT'S AUTHORITY
FEB 94
U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

Five copies. All copies, with original signatures by the Prosecutor and the Agents, should be sent to the Administrator in the RECEIVING State. After signing all copies, the Administrator should retain one copy for his file, send one copy to the Warden, Super-intendent or Director of the Institution in which the prisoner is located and return two copies to the Prosecutor who will give one to the Agents for use in establishing their authority and place one in his file. One copy should also be forwarded to the Agreement Administrator in the sending State.

Evidence of Agents' Authority
to Act for Receiving State

To: (Administrator and Address)

Federal Corrections Institute
3625 FCI Road, Marianna, FL 32446

Inmate (Name and Register No.)

Michael Herman Bozeman, a/k/a Sonny

#09549-002

is confined in (Institution and address)

Federal Corrections Institute, Marianne, FL

and will be taken into custody at said Institution on (date) February 26, 1997 for return to the County of Covington, State of Alabama for trial. In accordance with Article V(b), of said Agreement, I have designated:

Agent's Name and Department Represented

Clayne T. Bedsole
Covington County Sheriff's Office and/or

Agent's Name and Department Represented

Horace Waylon Griggs
Covington County Sheriff's Office and/or

Agent's Name and Department Represented

Donnie M. Rogers
Covington County Sheriff's Office

---

whose signatures appear below as Agents to return the prisoner.

(Agent's Signature)	(Agent's Signature)
✓ /s/ Clayton T. Bedsole	
✓ /s/ Horace Waylon Griggs	
✓ /s/ Donnie M. Rogers	

Dated February 11, 1997

Prosecuting Official's Signature
Eugenia L. Loggins
/s/ Eugenia L. Loggins

a. Title – District Attorney

b. County – Covington

c. Address – Covington County Courthouse
2nd Floor

d. City/State – Andalusia, AL

e. Telephone No – (334) 222-2513

(This form may be replicated via WP)

Continued below

DEFENDANT EXHIBIT #FIVE

IN THE CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,	*	
PLAINTIFF,	*	
VS.	*	CASE NO. SEP 95-GJ# 147
MICHAEL HERMAN BOZEMAN, A/K/A SONNY BOZEMAN,	*	
DEFENDANT.	*	

WRIT

Before me appears Eugenia L. Loggins, District Attorney for the 22nd Judicial Circuit of Alabama, Covington County, Alabama, and informs this Court that Michael Herman Bozeman, a/k/a Sonny Bozeman, federal inmate, is the defendant in the above styled cause which is scheduled for hearing for appointment of counsel and/or arraignment in the Circuit Court of Covington County, Alabama, on November 8, 1995; it is;

Therefore ORDERED and ADJUDGED by the Court that the Sheriff of Covington County, Alabama, remove the said Michael Herman Bozeman, a/k/a Sonny Bozeman, from the custody of the U.S. Marshal Middle District of Alabama no later than November 7, 1995, at the Dale County Jail, Ozark, Alabama, to the Covington County Jail, Andalusia, Alabama, it is,

Further ORDERED that upon completion of said hearing the Sheriff of Covington County, Alabama, shall

return the said Michael Herman Bozeman, a/k/a Sonny Bozeman, to the custody of the U.S. Marshal Middle District of Alabama.

DONE and ORDERED this 31st day of October, 1995.

/s/ Jerry E. Stokes
JERRY E. STOKES,
CIRCUIT JUDGE

U.S. DEPARTMENT OF JUSTICE
PROSECUTOR'S CERTIFICATION
Federal Bureau of Prisons

This is to certify that I, Eugenia L. Loggins,

Title, District Attorney, do hereby agree to the following conditions in connection with this request for custody of Michael Herman Bozeman, a/k/a Sonny Bozeman.
INMATE'S NAME

CONDITIONS

a. Agree to provide Inmate with the level of security required by Bureau of Prison's policy.

b. Agree to report to the Bureau of Prisons, any problems associated with said inmate, to include disciplinary problems, medical emergencies, suicide attempt, escape or attempted escape or any other problem arising during his/her confinement.

c. Agree not to release said inmate on bail or bond or to commit him to an institution for service of any sentence imposed in connection with our prosecution.

d. Agree to return said inmate to the federal institution from which he/she was obtained.

e. Agree to notify the local jail authority of the responsibility to return the inmate to federal custody.

As the Prosecuting Official for the state of Alabama, I Eugenia L. Loggins, Title District Attorney, hereby submit the following information in connection with my request for temporary custody of
Michael Herman Bozeman, a/k/a Sonny Bozeman,
INMATE'S NAME

09549002.
FEDERAL REGISTER NUMBER

INFORMATION

1. Name of jail facility where inmate will be confined during legal proceedings.
   Covington County Jail
2. Name and phone number of the jail administrator.
   Wilburn Mitchell, Sheriff of Covington County, Alabama
3. Scheduled date for trial. (hearing – appointment of counsel and/or arraignment)
   November 8, 1995
4. Projected date of return of the prisoner to federal custody.
   November 8 or 9, 1995.
5. Name and phone number of the state agency and the specific name of agent(s) who will transport the inmate to your jurisdiction.
   Covington County Sheriff's Office (334) 222-2513
   Lamar Fowler and/or
   Eddie Hoyle and/or Dennis [Illegible]

6. Signature and Title of Prosecutor.
/s/ Eugene L. Loggins DISTRICT ATTORNEY

Date October 30, 1995

Subscribed and sworn to before me this 30th day and month of October, 1995.

Signature of Notary Public
/s/ Jean Scott

Date October 30, 1995

DEFENDANT EXHIBIT #SIX

OFFICE OF THE DISTRICT ATTORNEY

COVINGTON COUNTY COURTHOUSE
ANDALUSIA, AL 36420
(205) 222-2513

[SEAL]

EUGENIA L. LOGGINS

DISTRICT ATTORNEY

TWENTY SECOND JUDICIAL CIRCUIT

January 8, 1997

Ms. Michelle Kent
Federal Corrections Institute
3625 FCI Road
Marianna, Florida 32446

Re: Michael Herman Bozeman
Inmate #09549-002

Dear Ms. Kent:

The above named individual, Michael Herman Bozeman, has outstanding charges for Shooting or Discharging Firearm into Occupied Building, Shooting or

Discharging Firearm into Unoccupied Building and Shooting or Discharging Firearm into Unoccupied Vehicle. Certified/exemplified copies of the indictment is enclosed herewith. In accordance with Investigator Hutcheson's recent telephone conversation with Shirleen Smith at your facility and my conversation of this date with you enclosed is the prosecutor's certification form and temporary custody form. Appointment of counsel and arraignment only is schedule for January 16, 1997. An agent with the Covington County Sheriff's Department will pick Mr. Bozeman up on January 15, 1997 and return him to your facility on January 16, 1997.

The following are court officials and addresses:

1. Roger A. Powell, Circuit Clerk, 22nd Judicial Circuit, Covington County Courthouse, Andalusia, AL 36420 (334) 222-4313

2. Jerry E. Stokes and M. Ashley McKathan, Circuit Judges, 22nd Judicial Circuit, Covington County Courthouse, 2nd Floor, Andalusia, AL 36420 (334) 222-4212 and (334) 222-7010

3. Sheriff Wilbur Mitchell and/or his agent, Covington County Courthouse, 1st Floor, Andalusia, AL 36420 (334 222-3148)

If you have any questions or need additional information, please call this office. Your cooperation in this matter is greatly appreciated.

Sincerely yours,

EUGENIA L. LOGGINS

/s/ Jean Scott
By: Jean Scott
ADMINISTRATIVE ASSISTANT

Enclosures

DEFENDANT EXHIBIT #SEVEN

OFFICE OF THE DISTRICT ATTORNEY

COVINGTON COUNTY COURTHOUSE
ANDALUSIA, AL 36420
(205) 222-2513

[SEAL]

EUGENIA L. LOGGINS

DISTRICT ATTORNEY

TWENTY SECOND JUDICIAL CIRCUIT

October 10, 1996

Mr. A. R. Steward, Inmate Systems Manager
United States Penitentiary
601 McDonough Boulevard SE
Atlanta, GA 30315

Re: Michael Herman Bozeman
Inmate #09549-002

Dear Mr. Stewart:

The above named individual, Michael Herman Bozeman, has outstanding charges for Shooting or

Discharging Firearm into Occupied Building, Shooting or Discharging Firearm into Unoccupied Building and Shooting or Discharging Firearm into Unoccupied Vehicle. Certified/exemplified copies of the indictment is enclosed herewith. In accordance with Investigator Hutcheson's recent telephone conversation with William McVay at your facility, please consider this letter as our official request to place a detainer on Mr. Bozeman on these charges. Appointment of counsel and arraignment date is December 16, 1996. Please mail us the necessary forms to fill out in order to get Mr. Bozeman here prior to that date.

The following are court officials and addresses:

1. Roger A. Powell, Circuit Clerk, 22nd Judicial Circuit, Covington County Courthouse, Andalusia, AL 36420 (334) 222-4313

2. Jerry E. Stokes and M. Ashley McKathan, Circuit Judges, 22nd Judicial Circuit, Covington County Courthouse, 2nd Floor, Andalusia, AL 36420 (334) 222-4212 and (334) 222-7010

3. Sheriff Wilbur Mitchell and/or his agent, Covington County Courthouse, 1st Floor, Andalusia, AL 36420 (334 222-3148)

If you have any questions or need additional information, please call this office. Your cooperation in this matter is greatly appreciated.

Sincerely yours,

EUGENIA L. LOGGINS

/s/ Jean Scott
By: Jean Scott
ADMINISTRATIVE ASSISTANT

Enclosures

DEFENDANT EXHIBIT #EIGHT

Attachment K, Page 1

BP-S566.051 CDFRM

IAD FORM VII – PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY

February 1994
U.S. Department of Justice Federal Bureau of Prisons

IMPORTANT: This form should only be used when an offer of temporary custody has been received as the result of a prisoner's request for disposition of a detainer. If the offer has been received because another prosecutor in your state has initiated the request, use form VIII. Copies of IAD VII (BP-S566(51)) should be sent to the warden, the prisoner, the other jurisdictions in your state listed In the offer of temporary custody, and the Agreement Administrator of both the sending and receiving states.

Copies should be retained by the person filing the acceptance and the judge who signs it.

Prosecutor's Acceptance of Temporary Custody Offered in Connection with a Prisoner's Request for Disposition of a Detainer

---

To: (Warden-Superintendent-Director) – Institution and Address

Federal Corrections Institute
3625 FCI Road Marianna, FL 32446

In response to your letter of (Date) _____

__x__ and offer of temporary custody regarding (Name of Inmate) Michael Herman Bozeman, a/k/a Sonny who is presently under indictment, information or complaint in the (Jurisdiction) 22nd Judicial Circuit of Alabama of which I am the (Title of Prosecuting Officer) District Attorney please be advised that I accept temporary custody and that I propose to bring this person to trial on the indictment, information or complaint named in the offer within the time specified in Article III(a) of the Agreement on Detainers.

Comments: (If your jurisdiction is the only one named in the offer of temporary custody, use the space below to indicate when you would like to send your agents to transfer the prisoner to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the space below to make inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard.)

Special Arrangements

Inmate will be picked up from facility on January 15, 1997 and returned on January 16, 1997.

Dated January 8, 1997

Printed Name and Signature
Eugenia L. Loggins /s/ Eugenia L. Loggins

Name/Title
District Attorney

Address
Covington County Courthouse

City/State
Andalusia, AL 36420

Telephone No.
(334) 222-2513

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request, I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

Dated 1-8-97

Judge's Printed Name and Signature
Jerry E. Stokes /s/ Jerry E. Stokes

Court
Circuit Court
22nd Judicial Circuit of Alabama

Judicial District 22nd

Address
Covington County Courthouse

City/State
Andalusia, AL 36420

Telephone No.
(334) 222-4212

(This form may be replicated via wordprocessing)

DEFENDANT EXHIBIT #NINE

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

UNITED STATES OF AMERICA	)	**PRESENTENCE INVESTIGATION REPORT**
v.	)	
MICHAEL H. BOZEMAN	)	**Docket Number: 95-140-N**

CHANGE(S) IN PSB

Prepared for:
The Honorable W. Harold Albritton
United States District Judge

Prepared by:
Jo Ann Sellers
United States Probation Officer
Montgomery, Alabama
(334) 223-7301

Assistant U.S. Attorney
Charles F. Teschner
One Court Square, Suite 201
Post Office Box 197
Montgomery, AL 36101-0197
(334) 223-7280

Defense Counsel
Mark A. Cavanaugh
4142 Carmichael Road, Suite C
Montgomery, AL 36106
(334) 269-9101

Sentence Date: November 3, 1995

Offense: Count I: Conspiracy to Possess with Intent to Distribute Methamphetamine [21 U.S.C. § 846] – Not less than 5 years nor more than 40/ $2,000,000 fine

Release Status: Custody of U.S. Marshal since June 16, 1995

Detainer(s): None known

Codefendant(s): None

Related Case(s): None

Date Report Prepared: September 15, 1995

Date Report Revised: October 19, 1995

* * *

Other Criminal Conduct

30. On March 22, 1993, the defendant went to the home of Linda Weed, Opp, Alabama, and asked to see his ex-wife, Yvonne Bozeman. Ms. Weed advised that Ms. Bozeman was not there and the defendant began cursing and threatening her. The police were called. They asked Bozeman to leave and advised him that he would be arrested if he returned. Bozeman left at that time.

31. On December 23, 1994, the defendant called the home of Yvonne Bozeman in Opp, Alabama. He demanded to see her, which was recorded on the answering machine. Subject also threatened to come into the house and take the answering machine by force.

32. On May 29, 1995, someone cut the driver's front and back tires of Yvonne Bozeman's car which was parked in front of her residence in Opp, Alabama.

Neighbors heard a hissing sound and saw a truck, identified as that of the defendant, driving away.

33. On July 6, 1995, the defendant was arrested by Opp police officers on a Harassing Communications and Criminal Trespassing warrant. During a search of Bozeman's person, a white pill bottle containing eight blue tablets was found in Bozeman's left front pocket. The pills were tested at the Department of Forensic Sciences in Dothan, Alabama. They were identified as Diazepam, a Schedule IV controlled substance.

Pending Charge(s)

34. At 12:08 a.m. on June 15, 1995, an unknown person fired into the residence of Yvonne Bozeman, 503-B East Park Avenue, Opp, Alabama. The victim was lying in bed at the time of the offense. Several rounds penetrated her bedroom wall. This same date at 2:07 a.m., an unknown person fired into the residence of Milton Williams at 2508 84 West, Opp, Alabama. Several rounds entered the residence, including the bedroom where the victim was sleeping. Additionally, the rear window of his Chevrolet Monte Carlo and his Chevrolet pick-up truck were shot. On June 15, 1995, at 11:00 a.m., an unknown person shot into the residence of Linda Weed, 303 Monroe Street, Opp, Alabama. The two shots fired entered a front window where a bedroom is located. The defendant was subsequently arrested and charged on June 15, 1995, by the Covington County Sheriff's Department with Intimidating a Witness.

[Filed Apr. 25, 1997]

IN THE CIRCUIT COURT OF COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

vs. **Case No.: CC-97-16**

MICHAEL HERMAN BOZEMAN,

Defendant.

RENEWAL OF DEFENDANT'S MOTION TO DISMISS

Defendant has previously moved the Court to dismiss the above-captioned case with prejudice because of the State's violation of the provisions of the Interstate Agreement on Detainers (IAD), Code of Alabama, 1975 as amended, § 15-9-81. Defendant now renews his Motion and adds the additional ground that the State has violated Article V(e) of the IAD which states that "[a]t the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state." The Court declined to rule on Defendant's Motion to Dismiss prior to trial, and the trial of the Defendant concluded on February 28, 1997. The Court has continued the sentencing hearing until ruling on the Motion to Dismiss. Fifty-six (56) days have now passed since the trial without a ruling on Defendant's Motion to Dismiss. Moreover, since judgment and sentence have not been passed on Defendant, no event which would trigger a right to appeal has occurred. Defendant has thus been

placed in limbo and is thereby prejudiced by the State's failure to return him to federal custody at the earliest practicable time.

The purpose behind the passage of IAD was to do away with the "uncertainties which obstruct programs of prisoner treatment and rehabilitation." IAD, art. I. By being held in the Covington County Jail for two months, the State is interfering with the rehabilitation which would be taking place if Defendant were in a federal penitentiary. This is clearly contrary to the spirit of IAD.

The State previously violated the anti-shuffling provisions of IAD; the State is now violating the timeliness provisions relating to the return of prisoners.

WHEREFORE, Defendant requests that the Court dismiss the above-captioned case and grant Defendant other appropriate relief.

/s/ Mark John Christensen
Mark John Christensen
P.O. Box 507
Andalusia, Alabama 36420
334/222-7118
Attorney for Defendant,
MICHAEL HERMAN BOZEMAN

[Certificate Of Service Omitted In Printing.]

[Filed May 19, 1997]

IN THE CIRCUIT COURT OF
COVINGTON COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

vs.

MICHAEL HERMAN BOZEMAN,

Defendant.

Case No.: CC-97-16

[DENIED
May 21, 1997
/s/ Ashley McKathan]
Circuit Judge

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR IN THE ALTERNATIVE FOR NEW TRIAL

Defendant respectfully moves the Court to enter judgment notwithstanding the verdict in the above-captioned case, or in the alternative, Defendant respectfully moves the Court to grant a new trial. As grounds therefor, Defendant would show the Court:

1. The verdict is contrary to law; and/or
2. The verdict is contrary to the weight of the evidence; and/or
3. Defendant was denied a fair and impartial trial because the State's violations of the Interstate Agreement on Detainers prevented Defendant from having adequate opportunity to consult with his Court-appointed attorney prior to the trial of this case. Defendant was only available in Covington County for one day at the time of his arraignment and Defendant was transferred to Covington County one day before his trial.

Defendant's counsel was not admitted to the Federal Penitentiary in Marianna, Florida to see Defendant when he tried to visit him there. These facts together with the controversy involved in not having Defendant's Motion to Dismiss ruled on prior to trial prejudiced Defendant's ability to put forward an adequate defense.

WHEREFORE, the Defendant respectfully requests the Court to grant this motion.

/s/ Mark John Christensen
Mark John Christensen
P.O. Box 507
Andalusia, Alabama 36420
334/222-7118
Attorney for Defendant
MICHAEL HERMAN BOZEMAN

[Certificate Of Service Omitted In Printing.]

ALABAMA JUDICIAL DATA CENTER
CASE ACTION SUMMARY
CASE: CC 99 000016.00

IN THE CIRCUIT COURT OF
COVINGTON COUNTY JUDGE: JES
STATE OF ALABAMA VS
BOZEMAN MICHAEL HERMAN

09/20/1996	TEXT	INDICTMENT
09/20/1996	TEXT	WRIT OF ARREST
01/24/1997	FILE	FILED THIS DATE: 01/24/97
01/24/1997	CHG1	CHARGE AT FILING OF: DISCHARGE GUN OCC BL
01/24/1997	CHG2	CHARGE AT FILING OF: DISCHARGE GUN UNOCC BLDG/VECH
01/24/1997	CHG3	CHARGE AT FILING OF: DISCHARGE GUN UNOCC BLDG/VECH
01/24/1997	ARRS	DEFENDANT ARRESTED ON: 01/24/97
01/24/1997	BOND	BOND SET FOR: $40000.00
01/24/1997	OFDT	OFFENSE DATE OF: 05/30/95
01/24/1997	ATY1	ATTORNEY FOR DEFENDANT: CHRISTENSEN, MARK JO
01/24/1997	TEXT	AFFIDAVIT OF SUBSTANTIAL HARDSHIP - GRANTED

1/24/97 Complaint and request for Declaratory Judgment as Motion to Dismiss

1/24/97 Defendant present with counsel and was arraigned in chambers. Pleads not guilty /s/ Jerry E. Stokes

1-28-97	Defendants request for production by state.
1-27-97	Motion for reimbursement of expenses
1-27-97	Order granting overhead expense
1-30-97	Order, that said counsel is entitled to compensation for reasonable "overhead expenses."
2-7-97	Request for Discovery
2-7-97	Answer to Motion for Discovery
2-7-97	Response to State's request for Discovery
2-21-97	Deft's motion to dismiss
2-21-97	Deft's motion to exclude inadmissible evidence
2-25-97	Memorandum brief in support of deft's motion to dismiss
2-25-97	Deft's request for additional discovery and motion to shorten time
2-28-97	Deft's Request for Discovery in Support of Post Trial Proceedings & Motion Shorten Time
3-4-97	Defendant's Request for Discovery in Support of Post-Trail [sic] Proceedings and Motion to Shorten Time
3-5-97	State's Requested Voir Dire
3-5-97	Defendant's Motion in Limine
3-5-97	Jury Strike List
3-5-97	Jury Verdicts
3-5-97	Order; after hearing the evidence the jury returned the following verdicts on February

28, 1997: "Upon Count I of the indictment, which charges the Defendant with Unlawfully Shooting or Discharging a Firearm into the Occupied Dwelling of Milton Williams, we, the Jury find the Defendant Michael Herman Bozeman: Guilty as charged."

"Upon Count II of the indictment, which charges the Defendant with Unlawfully Shooting or Discharging a Firearm into an Unoccupied Pick-up Truck of Milton Williams, we, the Jury, find the defendant Michael Herman Bozeman: Guilty as charge[d]."

"Upon Count III of the indictment, which charges the Defendant with Unlawfully Shooting or Discharging a Firearm into an Unoccupied Buick Automobile of Milton Williams, we, the Jury, find the Defendant Michael Herman Bozeman: Guilty as charge[d]."

"Upon Count IV of the indictment, which charges the Defendant with Unlawfully shooting or Discharging a Firearm into an Occupied Dwelling of Yvonne Bozeman, we, the Jury, find the Defendant Michael Herman Bozeman: Guilty as Charged."

"Upon Count V of the indictment, which charges the Defendant with Unlawfully Shooting or Discharging a Firearm into an Unoccupied Dwelling of Linda Weed, we, the Jury, find the Defendant Michael Herman Bozeman: Guilty as charged."

"Cecil R. Jones, Jr., Foreman"

Thereupon the Court continued further proceedings in the case in order to obtain a presentence report prior to judgment and sentencing. Judgment and sentencing are set for April 11, 1997, at 9:00 a.m. and it is ordered that a pre-sentence investigation be done and a report prepared. It is further Ordered and Adjudged by the Court that the results of the pre-sentence investigation be made available to the Court, the State, and the Defendant at said sentence hearing. It is further Ordered by the Court that the State furnish to the Defendant and his counsel within 10 days written notice of any prior felonies which the State expects to offer under the Habitual Offender Act. /s/ M. Ashley McKathan, Circuit Judge

3-5-97 Order; Order setting hearing on March 12, 1997 at 9:00 to hear issues raised by defendant respecting the Interstate Agreement on Detainer's Act.

4-11-97 Hearing set this day continued, to be rescheduled. /s/ Ashley McKathan, Judge.

4-25-97 Renewal of deft's motion to dismiss

5-16-97 Order; the request to have this case dismissed under the IAD is denied. Judgment and sentencing are now rescheduled for the 21st day of May 1997 at 4:30 p.m.

5-19-97 Motion for Judgment Notwithstanding the Verdict or in the Alternative for New Trial – Denied 5/21/97

05-21-97 This cause coming on for judgment and sentencing of the defendant, Michael Herman Bozeman, he having been tried by a jury and found guilty under Counts I, II, III, IV and V

of the indictment, and he being personally present and represented by his attorney, and the State being represented by the District Attorney, the Court proceeded with a sentence hearing before pronouncement of judgment and sentence.

Thereupon the Court asked defendant if he had anything to say as to why the judgment of the Court and the sentence of the law should not be imposed upon him and he made a statement. The Court then adjudged defendant guilty of Unlawfully Shooting or Discharging a Firearm into an Occupied Dwelling under Count I; guilty of Unlawfully Shooting or Discharging a Firearm into an Unoccupied Vehicle under Count II; guilty of Unlawfully Shooting or Discharging a Firearm into an Unoccupied Vehicle under Count III; guilty of Unlawfully Shooting or Discharging a Firearm into an Occupied Dwelling Under Count IV; and guilty of Unlawfully Shooting or Discharging a Firearm into an Unoccupied Dwelling under Count V. Having reviewed the report of the pre-sentence investigation the Court proceeded to sentence defendant as follows:

Pursuant to his conviction under Count I the Court sentenced him to 10 years imprisonment in the penitentiary of the State of Alabama.

Pursuant to his conviction under Count II the Court sentenced him to 10 years imprisonment in the penitentiary of the State of Alabama.

Pursuant to his conviction under Count III the Court sentenced him to 10 years

imprisonment in the penitentiary of the State of Alabama.

Pursuant to his conviction under Count IV the Court sentenced him to 10 years imprisonment in the penitentiary of the State of Alabama.

Pursuant to his conviction under Count V the Court sentenced him to 10 years imprisonment in the penitentiary of the State of Alabama.

The sentences imposed under Counts I, II, III, IV and V shall run concurrently with each other. Defendant shall receive credit for any time incarcerated hereon. However, the sentences imposed herein shall run consecutively with the sentence set in Federal Court Case No. 95-140-N, United States District Court for the Middle District of Alabama.

As an additional consequence of the state court convictions, the Court ORDERED defendant to pay the costs hereof, including the fees of his appointed attorney and $50.00 to the Alabama Crime Victim's Compensation Fund. Further ORDERED that defendant pay restitution as provided in the next paragraph.

The Court conducted a restitution hearing. Restitution is claimed on behalf of various individuals. (A) The claim for Mr. Robert Baldwin was not based on legal evidence, and an objection was raised in view of that defect respecting the claim made by Mr. Baldwin. Consequently, no restitution is ordered for said individual. *Alford v. State*, 651 So.2d 1109 (Ala. Crim. App. 1994). (B)

Defendant shall pay $495.00 restitution to the Clerk of the Court for the benefit of Mr. Raymond Killough. (C) Upon the claim for Mr. Milton Williams, damages to the house involved appears to be $751.53, as the Court believes labor can be obtained for less than the amount requested. Furniture damage is set at $923.09 based on the Court's opinion of that damage using the measure set out in *Howard v. State*, 639 So.2d 555 (Ala. Crim. App. 1993). Restitution on the Regal Automobile appears to be $1,220.08, and $541.72 is due on the Chevrolet. Total of the above amounts to be paid by defendant to the Clerk of the Court for the benefit of Mr. Milton Williams as restitution is thus $3436.42.

The Court advised defendant of his rights of appeal and he gave oral notice of appeal. Defendant remains indigent, and Honorable Mark Christensen is hereby appointed to represent him on appeal. Such certified copy of the record and reporter's transcript as defendant may be entitled to have by law shall be provided to him at State expense. The defendant is remanded to the custody of the Sheriff of Covington County, Alabama, who shall now transport him to the proper custodian.

It is further ORDERED that the Clerk shall forward a copy hereof to Honorable Mark Christensen, to the District Attorney, to the defendant, and to the Court Reporter for the 22nd Judicial Circuit of the State of Alabama.

/s/ Ashley McKathan
M. ASHLEY McKATHAN
CIRCUIT JUDGE

5-21-97	Notice of Appeal to the Court of Criminal Appeals of Alabama
5/21/97	Court of Criminal Appeal Docketing Statement
5/21/97	Reporter's Transcript Order
5/21/97	Notice of Appeal to the Alabama Court of Criminal Appeals
5-22-97	Order – Cov Co Sheriff is to return the deft to the custody of the Federal Correctional Institution of Marianna, Fl – Executed as to Michael H Bozeman on: 5-22-97
5/29/97	Transcript of Record
6/17/97	Motion to Set Appeal Bond and Order Setting Bond at $40,000.00 /s/MAM

JAN 25 2001

Supreme Court, U.S.
FILED
JAN 25 2001
OFFICE OF THE CLERK

No. 00-492

IN THE

SUPREME COURT OF THE UNITED STATES

STATE OF ALABAMA,

Petitioner,

v.

MICHAEL HERMAN BOZEMAN,

Respondent.

On Writ of Certiorari to the
Supreme Court of Alabama

BRIEF FOR PETITIONER

BILL PRYOR
Attorney General of Alabama

SANDRA JEAN STEWART*
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44 pp

QUESTION PRESENTED

Does transfer of federal custody to state custody for one day for purposes of arraignment, and transfer back to federal custody before the disposition of outstanding charges, a technical violation of the Interstate Agreement on Detainers, require dismissal of pending charges, even when there is no harm to the prisoner either alleged or demonstrated?

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The decision of the Alabama Court of Criminal Appeals is unpublished. (Pet. App. 15–26.) The decision of the Alabama Supreme Court is not yet reported, but can be found at 2000 WL 429936. (Pet. App. 1–14.)

STATEMENT OF JURISDICTION

The decision of the Alabama Supreme Court reversing Bozeman's convictions was entered on April 21, 2000. An application for rehearing was overruled on June 30, 2000. (Pet. App. 30.) The State filed a petition for a writ of certiorari on September 28, 2000. Jurisdiction in this Court exists under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

The following provisions of the Interstate Agreement on Detainers Act, also referred to as the Uniform Mandatory Disposition of Detainers Act, which is codified in Alabama in Sections 15-9-80 through 15-9-88 of the Code of Alabama 1975 (set out in full at Pet. App. 32–47):

Article I.

> The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints and difficulties in

securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

. . . . .

Article IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided, that the court having jurisdic-

tion of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further, that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentenee, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the

arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

. . . . .

Article IX.

1. This agreement shall be liberally construed so as to effectuate its purposes. . . .

Section 2111 of Title 28 of the United States Code:

> On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

Rule 45 of the Alabama Rules of Appellate Procedure:

> No judgment may be reversed or set aside, nor new trial granted in any civil or criminal case on the ground of misdirection of the jury, the giving or refusal of special charges or the improper admission or rejection of evidence, nor for error as to any matter of pleading or procedure, unless in the opinion of the court to which the appeal is taken or application is made, after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected the substantial rights of the parties.

STATEMENT OF THE CASE

This case arises out of the transfer of custody of Michael Bozeman between federal authorities and state authorities in Covington County, Alabama, and involves the application of the Interstate Agreement on Detainers (IAD), to which both the federal government and the State of Alabama are parties.

A. Relevant Events Occurring Prior To Trial

1. Facts On Which The Underlying Convictions Are Based

Michael Herman Bozeman was extremely jealous when it came to his ex-wife, and he continually harassed and threatened her. (Record 23–33, 46–49, 51–59, 79–82.) Around midnight, on June 14, 1995, after drinking almost two quarts of Lord Calvert whiskey, Bozeman and Jeff Anderson drove around the City of Opp, Alabama, in Anderson's van. (Record 126–28.) Bozeman brought with him a .22 caliber rifle that he had a reputation for keeping in his possession at all times. (Record 25, 129–30.) At Bozeman's instruction, Anderson drove by the townhouse of Bozeman's former wife, Carmen Yvonne Bozeman. (Record 132–33.) When they approached the townhouse, Bozeman stuck his .22 caliber rifle out of the window and fired shots into the bedroom of the residence, where his former wife was sleeping. (Record 33–36, 133–40.) Fortunately, Ms. Bozeman was not hit by the gunfire. (Record 36.)

Bozeman then directed Anderson to drive to the residence of Bozeman's former sister-in-law, Linda Weed. (Record 133–34.) Again, Bozeman stuck the

.22 rifle out of the van window and opened fire on the residence. (Record 133–40.) Ms. Weed was not at home at the time of the shooting. (Record 59–60.)

Bozeman then ordered Anderson to drive to the home of Melton Williams, a man who had recently begun dating Bozeman's former wife. (Record 134, 141.) Bozeman repeatedly shot into the bedroom of Mr. Williams's residence, where Mr. Williams was sleeping, (Record 83–85, 86, 180), and into Mr. Williams's vehicles, (Record 85–86, 180). Mr. Williams was also fortunate that he was not hit by the gunfire.

2. Facts Surrounding Bozeman's Transfers Between Federal Custody And State Custody

On June 15, 1995, the day after the shooting incidents, Bozeman was arrested on a federal charge of intimidating a witness, and he was placed in the county jail in Covington County, Alabama, by federal authorities.[1] (App. 54–55, 60, 66.) On June 16, 1995, he was also arrested on federal charges of conspiracy to possess with the intent to distribute methamphetamine and his custody was transferred to federal authorities, but he was placed in the county jail in Montgomery County, Alabama. (App. 23, 62–63; Record 102.)

In September of 1995, while Bozeman was in federal custody, he was indicted by a Covington

---

[1] The record does not reflect whether these charges were related to the shooting incidents underlying this case.

County Grand Jury for the unlawful possession or receipt of a controlled substance, all stemming from conduct that occurred in May of 1995. (Case No. CC-95-350) (App. 62–64.) Temporary custody of Bozeman was obtained from the federal authorities by Covington County authorities in November 1995 for the specific purpose of arraignment on the state drug charge, and Bozeman was arraigned and appointed counsel on that charge. (App. 62–64, 95–98.) After his arraignment and before disposition of the state drug charge, Bozeman was returned to the custody of the federal authorities. (App. 66–67.) In June of 1996, the state drug charge was dismissed. (App. 66–67.) At no time before his state drug charge was dismissed did Bozeman raise any allegations that his transfer from federal custody to state custody and back to federal custody violated the Interstate Agreement on Detainers.

Thereafter, on September 20, 1996, Bozeman was indicted in Covington County under state law on two counts of discharging a firearm into an occupied dwelling, two counts of discharging a firearm into an unoccupied vehicle, and one count of discharging a firearm into an unoccupied dwelling. (Case No. 97-16) (App. 4–9, 61–62.) These charges are the charges arising from the June 14, 1995, incident in which Bozeman fired into the homes of his ex-wife, his former sister-in-law, and his ex-wife's boyfriend. They are also the charges that form the basis of the detainer in this case.

On October 10, 1996, the Covington County District Attorney requested that a detainer be placed on Bozeman so that he could be arraigned in Covington County on the shooting charges. (App. 64, 100–02.) The Covington County District Attorney

specifically requested that Bozeman be made available for his upcoming arraignment on the shooting charges and requested that all necessary forms be mailed to her for completion and returned to the proper federal authorities in sufficient time for the State permissibly to obtain Bozeman. (App. 100–02.) The federal authorities in Atlanta responded that a detainer had been filed on Bozeman pursuant to the District Attorney's "October 29, 1996" request. (App. 64–65.) The record contains a notice to Bozeman of untried indictments and the right to request disposition of the charges in the shooting cases pursuant to Article III of the IAD, which he signed on November 4, 1996, and which acknowledges his receipt of the notice. (App. 34–36.)

Because Bozeman had been transferred from the Atlanta Federal Penitentiary to the federal prison in Marianna, Florida, the Covington County District Attorney's request for a detainer did not reach Bozeman until January of 1997. (App. 64–66.) On January 8, 1997, the District Attorney sent a letter and temporary custody form to the federal prison authorities in Marianna, Florida. (App. 98–100.) The letter and form indicated that Bozeman was needed for arraignment and appointment of counsel in the shooting case, case number CC-97-16, and that Bozeman would be picked up on January 15, 1997 and returned to federal authorities one day later, on January 16, 1997. (App. 98–99.) It was not until January 23, 1997, however, that temporary custody of Bozeman was transferred from federal authorities to Covington County authorities. (App. 56–57, 58, 67.) The next day, January 24, 1997, Bozeman was arraigned on the shooting charges and custody of Bozeman was transferred back to the federal authorities. (App. 26–31, 67.)

3. Facts Concerning Bozeman's Assertions That The IAD Had Been Violated

On the day he was brought to Covington County for arraignment, Bozeman filed a pro se motion to dismiss his indictment in which he asserted as grounds for dismissal violations of Articles IV(e) and V(e) of the Interstate Agreement on Detainers. (App. 18–25.) In that motion, Bozeman did not allege that the IAD would be violated if he were returned to federal custody before he was tried on the pending charges, but instead claimed that the IAD had already been violated when he was transferred in November 1995 for arraignment on the state drug charge. (App. 18–25.) Bozeman argued that, because the State had failed to dispose of the shooting charges in 1995 when he was brought back to Covington County, the IAD required that the shooting charges be dismissed. (App. 18–25.) When Bozeman was brought back for arraignment on the drug charge in November 1995, however, the shooting indictments had not yet been returned by the Covington County Grand Jury and, as to those charges, there were no "untried indictments, informations or complaints which form[ed] the basis of [that] detainer or detainers." *See* Article V(d) of the IAD. (App. 4–9, 61–62.)

Bozeman was arraigned on the shooting charges on January 24, 1997. (App. 26–31.) At that arraignment, appointed counsel for Bozeman indicated that there were some possible questions about whether the IAD had been properly followed and he requested permission to further investigate and research that issue. (App. 27.) At the time of that discussion, there had been no violation of the IAD as to the pending charges; specifically, Bozeman had not yet been returned to federal custody. Neither defense counsel

nor Bozeman informed the trial judge at that time that a return of Bozeman to federal custody before he was tried on the pending charges would result in a violation of the IAD, nor did they object to his return to federal custody. (App. 27–31.) Instead, counsel for Bozeman agreed to file any motions objecting to violations of the IAD at some later time. (App. 27.) Bozeman was returned to federal custody that same day. (App. 26–31, 67.)

Approximately one month later, on February 21, 1997, counsel for Bozeman filed Defendant's Motion To Dismiss, requesting that the indictment against Bozeman charging him with the several shooting violations be dismissed. (App. 32–36.) In support of his motion, Bozeman alleged that Article IV(e) of the IAD required dismissal of the indictment because he had been brought to Covington County to face the shooting charges and he had thereafter been returned to his original place of incarceration prior to being tried on the shooting charges. (App. 32–33.) In that motion, Bozeman did not allege that he was prejudiced in any way by the violation of the IAD. On February 25, 1997, Bozeman filed a Memorandum Brief In Support Of Defendant's Motion To Dismiss, again alleging violations of the IAD. (App. 37–42.) Bozeman did not allege any prejudice in that memorandum either.

On February 27, 1997, Bozeman was again released from federal custody to the custody of Covington County officials, this time for a trial on the shooting charges. (App. 57, 67–68, 86–87.) Before the trial began, the court held an in-chambers discussion regarding Bozeman's motions to dismiss on the grounds that the IAD had been violated. (App. 45–47.) Again, Bozeman failed to allege that he had been

prejudiced in any way by his previous one-day transfer. The trial court denied the motions to dismiss at that time so that the trial could proceed, but it reserved to Bozeman the right to put on testimony and evidence in support of his motions after the completion of the trial and specifically reserved to him the right to raise the issue by post-trial motion. (App. 45–47.)

Bozeman's trial proceeded on February 27, 1997, well within 120 days of Bozeman's first arrival in Covington County for arraignment on the pending shooting charges on January 24, 1997. The jury convicted Bozeman on all five counts of the indictment on February 28, 1997. (App. 114–15: Record 192–93.) At the conclusion of the trial, the trial court ordered that Bozeman remain in the custody of Covington County officials until the questions raised on the IAD were resolved and until sentencing was completed. (App. 48–49.)

On March 12, 1997, a hearing was held on Bozeman's motions to dismiss his indictment based on alleged violations of the IAD. (App. 53–84.) At that hearing, Bozeman did not present any testimony or make any argument that he was harmed in any way by the one-day transfer from federal custody to Covington County custody and back to federal custody. (App. 53–84.)

On April 25, 1997, Bozeman filed a Renewal Of Defendant's Motion To Dismiss in which he again asserted violations of the IAD. (App. 109–10.) In this motion, Bozeman added to his prior arguments concerning the IAD an assertion that Article V(e) was being violated by the failure to return him to federal custody "at the earliest possible time consonant with the purposes of the agreement." In this motion,

Bozeman argued that the failure to return him to federal custody was prejudicing him because, by failing to return him, "the State is interfering with the rehabilitation which would be taking place if Defendant were in a federal penitentiary. This is clearly contrary to the spirit of IAD." (App. 110.) This was the first time that Bozeman had alleged any prejudice from a violation of the IAD, and this allegation had nothing to do with his prior one-day transfer of custody.

On May 16, 1997, the Covington County Circuit Court judge denied Bozeman's motions to dismiss the indictment in a written order. (Pet. App. 27–29.) The judge found that the only issue before him was whether Article IV of the IAD had been violated. (Pet. App. 27.) Finding that the goals of the IAD had been met and that Bozeman had failed to demonstrate any prejudice, the trial judge denied the motions to dismiss. (Pet. App. 28–29.) Specifically, the trial judge found, in pertinent part:

> It seems to me that defendant was brought to Covington County on both the above mentioned occasions to attend to short pre-trial matters, not anticipated to require his extended presence. It made much sense to bring him into the county briefly to see to those matters, and thereupon return him to the surroundings to which he was accustomed. That course appears to have been conservative of *defendant's* interest in maintaining any course of rehabilitation available to him in federal prison. He certainly would not receive much rehabilitation in a county jail.

> To paraphrase another court, at the hearing of this matter there was a failure of proof that the short transfers to Covington County interfered with defendant's participation in any rehabilitative program, or that he was denied, threatened with the denial of, or feared losing any privileges because of this state charge, and no dismissal is appropriate. The transfers involved in this case appear to be wholly consistent with the goal of the IAD to expedite the prosecution of state charges without interfering with any rehabilitative programs of the federal government. . . .

(App. 28–29.)

Bozeman was sentenced on May 21, 1997 to five concurrent ten-year sentences, those sentences to run consecutively to the federal sentence that Bozeman was then serving. (App. 116–19.) Also on May 21, 1997, Bozeman filed a Motion For Judgment Notwithstanding The Verdict Or In The Alternative For New Trial, in which he again asserted violations of the IAD by his failure to be tried on the shooting charges before being returned to the custody of federal officials. (App. 11–12.) It was in this post-trial, post-decision motion that Bozeman, for the first time, alleged prejudice from his one-day transfer. (App. 111–12.) Bozeman made the conclusive allegation that the one-day transfer denied him the opportunity adequately to consult with counsel prior to trial. (App. 111–12.)

B. The Alabama Court of Criminal Appeals

Bozeman timely appealed to the Alabama Court of Criminal Appeals. Among the issues raised in his brief was the argument that his January 1997 one-day transfer from federal officials to state officials and back to federal officials, without disposing of the pending indictment, violated the Interstate Agreement on Detainers. Noting that the transfer of Bozeman in this case did not interfere with the purposes of the IAD and that Bozeman had asserted no prejudice from the transfers until his appeal, and even then only perfunctorily so, the Alabama Court of Criminal Appeals rejected Bozeman's argument and affirmed Bozeman's convictions. *Bozeman v. State*, CR-96-1611, mem. op. at 4, 6 (Ala. Crim. App. May 8, 1998) (Pet. App. 19, 21–22, 26). Bozeman's application for rehearing in that court was overruled on June 19, 1998. (Pet. App. 31.)

C. The Supreme Court of Alabama

Bozeman applied to the Alabama Supreme Court for certiorari, which it granted on February 19, 1999. In his petition for a writ of certiorari, Bozeman's sole issue was his argument that there had been a violation of the Interstate Agreement on Detainers requiring dismissal of his indictment. On April 21, 2000, the Alabama Supreme Court, in a per curiam, 5 to 3 decision, reversed Bozeman's convictions, holding that the violation of the IAD required dismissal of Bozeman's indictment. *Ex parte Bozeman*, No. 1971759, 2000 WL 429936 (Ala. Apr. 21, 2000). (Pet. App. 1–10.) In doing so, the Alabama Supreme Court refused to consider the State's argument that Bozeman had not demonstrated any harm from the technical

violation of Article IV(e) of the IAD. *Id.* at 8. The Court also held that its conclusion was "consistent with the purpose of the Act to protect a prisoner's constitutional right to a fair and speedy trial," but in no way explained how the one-day technical violation of the IAD impacted, affected, or even implicated Bozeman's right to a fair or speedy trial. *Id.* at 8.

The State filed an application for rehearing emphasizing that the technical violation of the IAD did not require dismissal of the indictment because the purposes of the Act had not been defeated and that the court had erred in failing to apply a harmless error analysis to the issue. On June 30, 2000, the court rejected the State's rehearing application.

SUMMARY OF THE ARGUMENT

The Interstate Agreement on Detainers (IAD) is an interstate compact within the Compact Clause of the United States Constitution and it is, therefore, subject to federal interpretation and federal law. Although Bozeman was tried in an Alabama court on Alabama charges and he appealed to the Alabama Supreme Court, the supreme court did not apply its harmless error rule because state law was allegedly preempted by federal law. Unfortunately, the supreme court erred by failing to apply the harmless error rule as a matter of federal law.

When Alabama enacted the IAD, the harmless error rule was firmly established as a part of federal law: it existed at common law, had been enacted as a federal statute, held applicable to most constitutional errors, held applicable to statutory violations, and held applicable on collateral review of convictions. In case after case, this Court has asserted a preference for application of the harmless error rule. It is against this backdrop that the Court must decide if harmless error applies to violations of the IAD.

Both case law from this Court and federal statutory law mandate that any error be reviewed to determine whether the error resulted in prejudice, whether that error is a constitutional error or a violation of a statute. The purposes behind the IAD also support a determination that harmless error applies to a violation of its provisions. In this case, where no harm contemplated by the IAD occurred from the technical one-day violation of Article IV(e) of the IAD, and where dismissal of the indictment would result in a windfall not contemplated by the Agreement, this Court should find that dismissal of the indictment was not

mandated in this case. The Alabama Supreme Court refused to apply the harmless error rule; its judgment should be reversed and Bozeman's shooting convictions should be reinstated.

ARGUMENT

A. When Analyzed in the Historical Setting in Which the IAD Was Passed, Harmless Error Was Meant to Apply to Violations of the IAD That Do Not Affect Substantial Rights.

The Interstate Agreement on Detainers is an agreement between 48 states, including the State of Alabama, the District of Columbia, Puerto Rico, the Virgin Islands, and the federal government. *Carchman v. Nash*, 473 U.S. 716, 719 (1985). "The [IAD] was drafted in 1956 by the Council of State Governments," *id.*, and was adopted in 1978 by the State of Alabama, where it is now codified at sections 15-9-80 through 15-9-88 of the Code of Alabama 1975. (Pet. App. 32–47) The overriding purpose of the IAD is to encourage the expeditious and orderly disposition of untried indictments and to encourage the determination of the proper status of any and all detainers based on such charges, in order to eliminate uncertainties that obstruct programs designed to treat and rehabilitate prisoners. *See* Article I of the IAD. Alabama joined the IAD to meet the concerns expressed in the Agreement. 1978 Ala. Acts 590.

Michael Bozeman was tried in an Alabama circuit court in February of 1997 and convicted of crimes in violation of Alabama statute, specifically section 13A-11-61 of the Code of Alabama 1975. (App. 4–7, 114–

15.) He appealed those state convictions to the Alabama appellate courts where, ordinarily, those courts would apply the state harmless error rule to identified errors before determining reversal was necessary. *See* Rule 45 of the Alabama Rules of Appellate Procedure ("No judgment may be reversed or set aside, nor new trial granted in any civil or criminal case . . . for error as to any matter of pleading or procedure, unless in the opinion of the court to which the appeal is taken or application is made, after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected substantial rights of the parties."). In this case, however, the Alabama Supreme Court, recognizing that the IAD was a federal law subject to federal construction, did not apply the harmless error rule of Rule 45 because the court felt that that state law was preempted by federal law in this context. *See Ex parte Bozeman*, No. 1971759, 2000 WL429936, at *2 (Ala. Apr. 21, 2000). (Pet. App. 6) In fact, this Court has specifically held that, because the IAD "was intended to be a grant of consent under the Compact Clause, and because the subject matter of the Act is an appropriate subject for congressional legislation, . . . the Detainer Agreement is a congressionally sanctioned interstate compact the interpretation of which presents a federal question." *Cuyler v. Adams*, 449 U.S. 433, 442 (1981) (footnote omitted).

When the IAD was developed and enacted, the harmless error rule was deeply entrenched in federal jurisprudence. The idea that errors that did not affect the verdict should not result in reversal of convictions existed at common law. *See generally* 1 Wigmore, *Evidence* § 21 (Tillers rev. 1983); *see also*, *O'Neal v. McAninch*, 513 U.S. 432, 437 (1995) (referring to the "original common-law harmless-error" rule). In 1919,

Congress enacted the first federal harmless error statute, the predecessor to section 2111 of Title 28 of the United States Code, in response to widespread criticism that some appellate courts were reversing cases based on mere technical errors that did not affect the substantial rights of the parties, leading to inconsistent results in cases. *Kotteakos v. United States*, 328 U.S. 750, 757–62 (1946). In *Kotteakos*, the Court, assessing the federal harmless error statute and its application, held that it applied to more than mere technical errors and specifically applied to resolution of issues involving violations of federal statutes. 328 U.S. at 757–62. Thereafter, in *Chapman v. California*, 386 U.S. 18 (1967), the Court developed a harmless error rule to apply to constitutional errors, finding that, even though section 2111 was not meant to and did not apply to constitutional issues, harmless error analysis was the rule rather than the exception and should apply to constitutional errors. A harmless error rule was also developed to apply on collateral proceedings. *See Brecht v. Abrahamson*, 507 U.S. 619 (1993). In case after case, this Court has asserted a preference for application of harmless error analysis to errors that do not affect the substantial rights of the parties.

Moreover, all 50 states have harmless error rules, *see*, *Chapman v. California*, 386 U.S. at 22, including Alabama, Rule 45, Ala.R.App.P., demonstrating that the States as well as this Court have a preference for application of the rule to errors that do not affect the substantial rights of the parties.

The IAD was passed against this long history of a preference for the application of the rule of harmless error. This Court must now determine whether, in enacting the IAD, Congress intended the rule not to

apply to its provisions. *See, Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975) (look to historical backdrop concerning award of attorneys' fees to determine whether Congress intended award of attorneys' fees where statute silent on matter); *Ruckelshaus v. Sierra Club*, 463 U.S. 680 (1983) (same); *Bob Jones University v. United States*, 461 U.S. 574 (1983) (look to historical background concerning charitable purpose tax exemption). The only sensible and reasonable interpretation is that harmless error does apply to the IAD.

B. Harmless Error Analysis Is Applicable To The Evaluation Of Errors Involving Both The Constitution And Federal Statutes, Like The IAD.

As noted, in *Cuyler v. Adams*, 449 U.S. 433, 442 (1981), this Court held that the IAD is subject to federal interpretation. Because the IAD is subject to federal interpretation and federal law, those cases addressing the issue of harmless error involving the Constitution and federal statutes control. The Supreme Court of Alabama, therefore, erred when it failed to apply a rule of harmless error in this case.

"The harmless-error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, . . . and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error." *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986) (internal citation omitted); *accord, Rose v. Clark*, 478 U.S. 570, 577 (1986). Harmless error rules recognize the

necessity for preserving society's interest in the administration of criminal justice and the general rule that remedies should be tailored to the injury suffered. *Rushen v. Spain*, 464 U.S. 114, 117–18 (1983) (*citing United States v. Morrison*, 449 U.S. 361 (1981)).

In *Kotteakos v. United States*, 328 U.S. 750 (1946), this Court noted the purpose behind the federal harmless error rule: "to substitute judgment for automatic application of rules; to preserve review as a check upon arbitrary action and essential unfairness in trials, but at the same time to make the process perform that function *without giving men fairly convicted the multiplicity of loopholes which any highly rigid and minutely detailed scheme of errors, especially in relation to procedure, will engender* and reflect in a printed record." *Id.* at 759–60 (emphasis added). The Court continued that the federal harmless error rule came down to "a very plain admonition: 'Do not be technical, where technicality does not really hurt the party whose rights in the trial and in its outcome the technicality affects.' " *Id.* at 760.

In *Chapman v. California*, 386 U.S. 18 (1967), this Court held that the harmless error rule applies not only to statutory violations, like those in *Kotteakos*, but it also applies to federal constitutional errors. Noting that none of the state federal harmless error rules nor the federal harmless error rule distinguished between federal constitutional errors and statutory errors, the Court concluded that there were some constitutional errors which could be so unimportant and insignificant that they could be deemed harmless, not requiring automatic reversal of the conviction. *Id.* at 22. In reaching its conclusion, the Court noted that the harmless error rules of the various states and the federal rule served a very useful purpose in that they

blocked setting aside convictions for small errors that had little, if any, likelihood of changing the result of the trial. *Id.* This Court has recognized and applied the harmless error rule in myriad circumstances involving constitutional error. *See, e.g., Neder v. State*, 527 U.S. 1 (1999) (where jury instructions failed to submit materiality issue, an element of the offense, to jury for consideration); *Arizona v. Fulminante*, 499 U.S. 279 (1991) (introduction at trial of coerced confession); *Pope v. Illinois*, 481 U.S. 497 (1987) (erroneous jury instruction on standard to be applied in determining whether material obscene); *Rose v. Clark*, 478 U.S. 570 (1986) (*Sandstrom* error); *Connecticut v. Johnson*, 460 U.S. 73 (1983) (*Sandstrom* error); *Hopper v. Evans*, 456 U.S. 605 (1982) (failure to give lesser included offense jury instruction in capital case); *United States v. Morrison*, 449 U.S. 361 (1981) (denial of Sixth Amendment right to counsel); *Oregon v. Hass*, 420 U.S. 714 (1975) (compulsory self-incrimination); *Coleman v. Alabama*, 399 U.S. 1 (1970) (denial of right to counsel at preliminary hearing); *Harrington v. California*, 395 U.S. 250 (1969) (*Bruton* error).

In addition to applying the harmless error rule in the very important area of constitutional analysis, this Court has also applied the harmless error rule to issues involving violations of federal statutes. *See, e.g., Peguero v. United States*, 526 U.S. 23, 27–29 (1999) (violation of Rule 32(a)(2) of Federal Rules of Criminal Procedure); *United States v. Montalvo-Murillo*, 495 U.S. 711, 716–22 (1990) (violation of Rule 6 of Federal Rules of Criminal Procedure and 18 U.S.C. §§6002, 6003); *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255–56 (1988) (violation of Bail Reform Act of 1984, 18 U.S.C. § 3142 (e)); *United States v. Lane*, 474 U.S. 438 (1986) (violation of Rule 8 of the Federal Rules of Criminal Procedure); *Kotteakos v. United*

States, 328 U.S. 750 (1946) (violations of federal statutes concerning indictments and conspiracies).

In *United States v. Lane*, 474 U.S. 438 (1986), this Court noted that, since *Chapman v. California*, 386 U.S. 18 (1967), it had made it consistently clear that " 'it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations.' " 474 U.S. at 445 (internal quotation marks omitted). Finding that "the argument for applying harmless-error analysis is even stronger" in situations involving violations of statutes which "are not themselves of constitutional magnitude," the Court held that a violation of Rule 8 of the Federal Rules of Criminal Procedure did not require reversal under the facts of that case. 474 U.S. at 446. The Court went on to note that "[i]t is difficult to see any logic in the argument that although the harmless-error rule may be applicable to constitutional violations, it should not be applied to violations of mere procedural rules." *Id.* at 446 n. 9. This Court also noted the lack of logic in an argument that harmless error analysis can be applied to constitutional error but not to violations of statutes in *Bank of Nova Scotia v. United States*, 487 U.S. 250, 256 (1988), where it held: "It would be inappropriate to devise a rule permitting federal courts to deal more sternly with nonconstitutional harmless errors than with constitutional errors that are likewise harmless."

In *Brecht v. Abrahamson*, 507 U.S. 619 (1993), this Court answered the question of whether harmless error applies to collateral proceedings under section 2254 of Title 28 of the United States Code, despite Congress's failure to address the matter in the habeas corpus statute, in the affirmative. The Court, noting that the habeas corpus statute was silent on the

application of the harmless error rule or the specific standard of harmless error review required, 507 U.S. at 631, and that it was generally reluctant to draw inferences where Congress had failed to act, 507 U.S. at 632, nonetheless fashioned a harmless error rule to apply on collateral review. In reaching its conclusion, the Court held:

> In the absence of any express statutory guidance from Congress, it remains for this Court to determine what harmless-error standard applies on collateral review of petitioner's . . . claim. We have filled the gaps of the habeas corpus statute with respect to other matters, . . . and find it necessary to do so here. As always, in defining the scope of the writ, we look first to the considerations underlying our habeas jurisprudence, and then determine whether the proposed rule would advance or inhibit these considerations by weighing the marginal costs and benefits of its application on collateral review.

Id. at 633 (internal citations omitted).

Just as the habeas corpus statute was silent on the issue of whether harmless error applied to its provisions, the IAD is silent on that issue. Even though the IAD is silent on this issue, however, this Court should, as it did in *Brecht*, find that the harmless error rule applies because application of the harmless error rule to the IAD would best advance the purposes of the IAD, the costs to the prisoner would be nil, and the benefits to society great.

Moreover, in construing the IAD, this Court must do so against this historical backdrop establishing a preference for the application of harmless error. In case after case, this Court has emphasized that, in construing statutes that are silent as to the application of firmly rooted legal principles, the statute must be interpreted in a way that is most consistent with those established principles. *See, e.g., Beck v. Prupis*, 120 S. Ct. 1608, 1615–17 (2000) (RICO interpreted against backdrop of "well-established common-law civil conspiracy principles"); *United States v. A Parcel of Land*, 507 U.S. 111, 127–29 (1993) (forfeiture provisions of Comprehensive Drug Abuse Prevention and Control Act interpreted against backdrop of common law forfeiture rules); *Wyatt v. Cole*, 504 U.S. 158, 163–64 (1992) (whether qualified immunity available defense for private defendant in §1983 action determined against backdrop of common law tort immunity); *Moskal v. United States*, 498 U.S. 103, 108–19 (1990) (construing term "falsely made" in 18 U.S.C. §2314 against backdrop of common law definition); *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975) (construing whether party entitled to attorneys' fees under Mineral Land Leasing Act or National Environmental Policy Act of 1969 against backdrop of common law right to attorneys' fees). There is nothing in the IAD to indicate that the drafters of that legislation meant to change the established precedent concerning harmless error. Construing the IAD against this backdrop, harmless error should apply to its provisions.

Other opinions from the Court bolster the conclusion that harmless error applies to the IAD. In *Reed v. Farley*, 512 U.S. 339 (1994), a majority of this Court held that a violation of the 120-day rule of Article IV(c) of the IAD is not cognizable in a federal

habeas corpus action brought under 28 U.S.C. § 2254 where the petitioner neither objected at the time his trial date was set, nor suffered any prejudice as a result of the commencement of his trial beyond the 120 days set in the rule. The IAD provides that violation of the 120-day rule, like violation of the anti-shuffling provision at issue here, requires dismissal of the indictment with prejudice. Referring to the statutory violation in that case as an "unwitting judicial slip," Justice Ginsburg found that the violation in that case "ranke[d] with the nonconstitutional lapses we have held not cognizable in a postconviction proceeding." 512 U.S. at 349. Moreover, Justice Scalia, in his concurring opinion, also rejected the availability of habeas review for violation of Article IV(c) of the IAD. Addressing the issue of whether habeas review should be available to the procedural violation in that case, Justice Scalia wrote:

> The class of procedural rights that are not guaranteed by the Constitution (which includes the Due Process Clause), but that nonetheless are inherently necessary to avoid a 'complete miscarriage of justice,' or numbered among 'the rudimentary demands of fair procedure,' is no doubt a small one, if it is indeed not a null set. The guarantee of trial within 120 days of interjurisdictional transfer unless good cause is shown — a provision with no application to prisoners involved with only a single jurisdiction or incarcerated in one of two States that do not participate in the voluntary IAD compact — simply cannot be among that select class of statutory rights.
>
> . . . . .

> If there was ever a technical rule, the IAD's 120-day limit is one.

Id. at 357–58.

Much like the 120-day rule of Article IV(c), the anti-shuffling provision of Article IV(e) is a technical rule. And just as habeas should not be available to review such a violation because it is a mere procedural rule, the harmless error rule should be available to review a claim of error under that provision.

In *New York v. Hill*, 120 S. Ct. 659 (2000), this Court addressed the issue of whether a prisoner could waive violation of the 180-day provision of Article III(a) of the IAD by merely complying with a trial date set beyond the 180-day period and found that he could. In rejecting Hill's argument, this Court noted that no provision of the IAD specifically addressed the issue of waiver, *id.* at 663, but it nonetheless found that waiver applied because of the general rule that presumes the availability of waiver. Likewise, while no provision of the IAD specifically addresses the issue of harmless error, the general rule that presumes that harmless error analysis of a given error is appropriate should apply in the instance case.

Based on this Court's long precedent, harmless error analysis should be applied to violations of the IAD. The failure of the Alabama Supreme Court to follow this precedent constitutes reversible error.

C. The Purposes Behind The IAD Also Support A Finding That A Harmless Error Analysis Should Be Applied To Violations Of The IAD.

Article IV(e) of the IAD provides that an indictment should be dismissed, with prejudice, if a prisoner is returned to a sending state before resolution of pending charges. The literal language of this provision seems to preclude application of harmless error to it, but in fact does not. This provision must be read in conjunction with other provisions of the IAD; specifically, it must be read in conjunction with those provisions that outline the purposes for which the IAD exists. *See* Article IX of the IAD ("This agreement shall be liberally construed so as to effectuate its purposes."). *See also, Cuyler v. Adams*, 449 U.S. 433, 449–50 (1981) (Court looked to "the purpose of the Detainer Agreement, as reflected in the structure of the Agreement, its language, and its legislative history," to determine whether IAD had been violated); *Bob Jones University v. United States*, 461 U.S. 574, 586 (1983) (court should go beyond literal language of statute if reliance on language defeats purposes of statute). Read as a whole, the Agreement itself also supports application of the harmless error rule.

Unlike many statutes, the reasons for the IAD and the purposes behind it are clearly stated within the legislation. Article I of the IAD states that the Agreement was based on a finding that "charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation." "Accordingly, its purpose is to encourage the expeditious disposition of

such charges and to provide cooperative procedures among member States to facilitate such disposition." *United States v. Mauro*, 436 U.S. 340, 351 (1978).

In *United States v. Mauro*, this Court further elaborated on the purposes behind the IAD, noting that the problems resulting in adoption of the IAD included the serious disadvantages prisoners under detainer were subjected to, including more onerous conditions of incarceration, precluding their participation in work assignments, activities, and rehabilitation programs, and creating uncertainties about the length of their sentences. *Id.* at 359–60. The Court concluded that "[t]he adverse effects of detainers that prompted the drafting and enactment of the Agreement are thus for the most part the consequence of the lengthy duration of detainers. Because a detainer remains lodged against a prisoner without any action being taken on it, he is denied certain privileges within the prison, and rehabilitation efforts may be frustrated." *Id.* at 360. *See also*, *Carchman v. Nash*, 473 U.S. 716, 719–20, 729–30 (1985); *Cuyler v. Adams*, 449 U.S. 433, 448–49 (1981).

In enacting the IAD, the member States included a clear statement of the purposes behind the IAD and included a clear statement that the Agreement was to be liberally construed to effectuate those purposes. Many of the federal appellate courts addressing this issue have found that the purposes of the IAD would not be served by dismissal of an indictment because of a technical violation of Article IV(e) of the Agreement and they have held dismissal was not warranted under such circumstances. *United States v. Daniels*, 3 F.3d 25, 27–28 (1st Cir. 1993) (finding the purposes of the IAD were not violated by two brief, same-day transfers and dismissal of indictment therefore was not

required); *United States v. Roy*, 771 F.2d 54, 59–60 (2d Cir. 1985) (one-day interruption of state prison confinement by transfer to federal custody for motion hearing posed no threat to prisoner's rehabilitation sufficient to require dismissal of indictment under IAD); *Sassoon v. Stynchombe*, 654 F.2d 371, 374–75 (5th Cir. 1981) ("A brief removal of a prisoner to the receiving jurisdiction and his prompt return to the sending jurisdiction after arraignment and prior to trial is consonant with the intention of the Interstate Agreement on Detainers."); *United States v. Taylor*, 173 F.3d 538 (6th Cir.) (finding that purposes of IAD not violated by six brief, same-day transfers and dismissal of indictment not, therefore, required), *cert. denied*, 120 S. Ct. 448 (1999); *United States v. Roy*, 830 F.2d 628, 635–37 (7th Cir. 1987) (stressing that the IAD should be construed to effectuate its overall intent, dismissal of indictment not warranted despite one-day transfer), *cert. denied*, 484 U.S. 1068 (1988); *Baxter v. United States*, 966 F.2d 387, 389–90 (8th Cir. 1992) (returned to custody the same day, no violation of IAD because no violation of purposes of IAD); *United States v. Johnson*, 953 F.2d 1167, 1170–71 (9th Cir.) (one-day transfer not violation of IAD because no evidence that purposes of IAD not met), *cert. denied*, 506 U.S. 879 (1992). In rejecting the prisoners arguments in those cases, the federal appellate courts held that, despite the technical violation of the statute and the literal language of the relevant provisions, the Agreement was not violated because of the purposes behind the IAD. In doing so, those courts relied on the "well-established canon of statutory construction that a court should go beyond the literal language of a statute if reliance on that language would defeat the plain purpose of the statute . . . ." *Bob Jones University v. United States*, 461 U.S. 574, 586 (1983); *see also, Dickerson v. New Banner Institute*, 460 U.S.

103, 110 (1983); *United States v. Bryan*, 339 U.S. 323, 337–38 (1950).

In the case before this Court, no tenable claim can be made that the purposes behind the IAD were violated. Bozeman has not established any plausible or cognizable prejudice from his one-day transfer. He has not alleged that his right to a speedy trial was denied. Nor could he: Bozeman was tried well within the 120-day period provided in Article IV(c) of the Agreement. Moreover, he has not alleged that the one-day transfer led to any denial of participation in a federal rehabilitation program, any denial of privileges he would have otherwise received, or it affected his sentence in any way. The purposes behind the IAD simply would not be vindicated by dismissing Bozeman's indictment.

Nor, critically, did Congress exempt the IAD from application of the harmless error. Had the participants in the IAD intended the harmless error rule, customarily applicable to most constitutional errors and errors violating statutes and rules, not apply, surely they would have said so in the statute. Otherwise, "[o]n the hearing of *any* appeal or writ of certiorari in *any* case, the court *shall* give judgment without regard to errors or defects which do not affect the substantial rights of the parties." 28 U.S.C. § 2111 (emphasis added). In this case, no substantial right of Bozeman's was affected. Therefore, the harmless error rule applies.

D. When A Harmless Error Analysis Is Applied To The Facts Presented In This Case, Dismissal Of The Indictment Is Not Warranted.

"Mere 'technical errors' which do not 'affect the substantial rights of the parties' are not sufficient to set aside a jury verdict in an appellate court." *Palmer v. Hoffman*, 318 U.S. 109, 116 (1943). In this case, any error in transferring custody of Bozeman for one day from federal custody to state custody and back to federal custody was, at most, a technical violation of Article IV(e) of the IAD. Dismissal of his indictment was not, therefore, warranted.

In this case, Bozeman failed to present any evidence that he was harmed by the brief one-day transfer that occurred in this case. He failed to demonstrate that *any* of the purposes behind the IAD were frustrated by his one-day transfer; specifically, he failed to show that his right to a speedy trial was frustrated, that he was denied any rehabilitation to which he was entitled, or that his sentence was negatively affected in any way.

The prosecutor in this case, shortly after the indictment was returned on September 20, 1996, sought to have Bozeman returned to Covington County, Alabama from federal custody so that he could be tried on the outstanding charges. (App. 64, 100–02) He was brought back to Covington County for arraignment and was arraigned and returned to federal custody the next day. (App. 26–31, 56–58, 67) Despite his obvious knowledge of the provisions of the IAD, including the anti-shuffling provisions (App. 18–25), Bozeman did not inform the trial judge that, if he were returned to federal custody before trial, his rights under the IAD would be violated, and he did not object

to his return to federal custody when he was returned (App. 26–31). Moreover, he specifically agreed to have the IAD issues that he had already raised resolved at a future time. (App. 27) It was approximately one month later, just before he was returned to Covington County for trial, that Bozeman first objected to his temporary transfer, and even then he failed to allege that he had been prejudiced by the transfer. (App. 32–36, 37–42) Bozeman was then tried on February 27–28, 1997, within 34 days of his initial transfer to Alabama.

Not only did Bozeman fail to allege any harm from his temporary one-day transfer, he appeared to acquiesce in it. In the light of these facts and the specific purposes behind the IAD, Bozeman should not be granted the windfall that dismissal of the indictment would grant him in this case. "This Court has frequently articulated the 'great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided.' " *Brock v. Pierce County*, 476 U.S. 253, 260 (1986) (*citing United States v. Nashville, C. & St. L.R. Co.*, 118 U.S. 120 (1886)). " 'Reversal for error regardless of its effect on the judgment, encourages litigants to abuse the judicial process and bestirs the public to ridicule it.' " *Johnson v. United States*, 520 U.S. 461, 470 (1997) (internal citation omitted). Considering the character of the proceeding at stake here — a criminal trial involving convictions for violent felony offenses — and the relation of the error asserted to that proceeding — a mere technical, procedural violation not resulting in any harm to Bozeman — this Court should weigh the balance in favor of the State of Alabama and against Bozeman, finding that any error in the violation of Article IV(e) of

the IAD in this case was harmless error. *Kotteakos v. United States*, 328 U.S. 750, 762 (1946).

Finally, while this Court does not generally apply a harmless error analysis in the first instance, *see, e.g., Carella v. California*, 491 U.S. 263, 266–67 (1989); *Pope v. Illinois*, 481 U.S. 497, 504 (1987); *Moore v. Illinois*, 434 U.S. 220, 232 (1977), it has done so, *see, e.g., United States v. Hasting*, 461 U.S. 499, 509–12 (1983); *Chapman v. California*, 386 U.S. 18, 24–26 (1967), and should do so in this case. The Alabama Supreme Court was asked to do the analysis, but chose not to do so. This Court should, therefore, address the harmless error argument advanced by the State of Alabama in this case and should find that the technical violation of Article IV(e) in this case was harmless error.

CONCLUSION

The judgment of the Supreme Court of Alabama should be reversed.

Respectfully submitted,

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IN THE
Supreme Court of the United States

STATE OF ALABAMA,
Petitioner,

v.

MICHAEL HERMAN BOZEMAN,
Respondent.

On Writ of Certiorari to the Supreme Court of Alabama

BRIEF FOR RESPONDENT

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QUESTION PRESENTED FOR REVIEW

Whether the unambiguous, mandatory language of the Interstate Agreement on Detainers was correctly interpreted by the Supreme Court of Alabama?

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STATEMENT OF THE CASE

Respondent, Michael Herman Bozeman, was arrested by Covington County, Alabama sheriff's deputies on June 15, 1995 in Opp, Alabama on the federal charge of intimidating a witness. (App. 55.) The shooting incidents that were the basis for the charges in the present case had occurred the night before. There is some dispute about whether the federal charges were connected to the shooting incidents.[1] However, there is no dispute that the investigation of the shooting incidents was done by the Opp Police Department and that *no further investigation was done after June of 1995*. (App. 61-62.) It is also undisputed that Bozeman had been in federal custody since June 16, 1995 and was serving a federal sentence at all times relevant to the issue in this case. (App. 70-71.)

Bozeman pled guilty to federal drug charges and was sentenced in federal court, the United States Court for the Middle District of Alabama, on November 3, 1995 in Case No. 95-140-N. (App. 71, 106-107.) The federal pre-sentencing report shows that the shooting charges with which Bozeman was charged in the present case were still pending at the time of his federal sentencing. (App. 108.) Bozeman was not indicted on the shooting charges until September of 1996. (App. 4-7.)

In the meantime, Bozeman was indicted for possession of a controlled substance in Covington County Case CC-95-350 in September of 1995. (App. 62-63.) On November 8, 1995, Bozeman was transferred to the custody of the Sheriff of Covington County, Alabama, was appointed counsel, was

---

[1] Bozeman testified that the federal intimidating a witness charges were based on the shooting incidents. (App. 73-74.) The District Attorney testified that she knew of no connection between them. (App. 60.) The report of Bozeman's federal presentence investigation seems to connect the two. (App. 108.)

arraigned, and was then returned to federal custody without having been tried on the pending shooting charges. (App. 71.) The State drug possession charges in CC-95-350 were dismissed on June 4, 1996 on motion of the State. (App. 22, 66.)

Following the indictment on the shooting charges, Covington County placed a detainer on Bozeman by sending a letter dated October 10, 1996 to federal prison authorities in Atlanta, Georgia. (App. 64, 100-102.) The same letter that requested that a detainer be placed on Bozeman also requested that Bozeman be transferred to Covington County. (App. 101.) However, Bozeman had been moved from the federal penitentiary in Atlanta to the federal penitentiary in Marianna, Florida, and the Covington County District Attorney's office sent a second letter dated January 8, 1997 requesting that Bozeman be transferred to Covington County. (App. 64-65, 98-100.)

After the District Attorney's office had completed the proper forms, Bozeman was brought from the federal penitentiary to Covington County in the custody of the Sheriff of Covington County on January 23, 1997. (App. 56, 65-66, 86-87.) On January 24, 1997, counsel was appointed for Bozeman and he was arraigned on the shooting charges. (App. 17, 28-31.) Since Bozeman's counsel had been appointed only moments before the arraignment, he requested and was granted leave to raise any issues that would normally be addressed prior to arraignment.

> **MR. CHRISTENSEN:** I would also like, if possible, to—it appears that there may be some question about whether the Interstate Agreement on Detainers was properly followed and I need to do some checking on that. What would we would like to . . . .
>
> . . . .

> **THE COURT:** . . . . Well, the record will show that Mr. Christensen here was appointed this morning and the Court understands that he may not have had an adequate opportunity to look into your case thoroughly before being asked to face arraignment. So I am going to proceed with the arraignment, but grant leave on the record to Mr. Christensen to file after arraignment any motions or raise any matters that he might otherwise normally look into and file prior to arraignment.

(App. 27, 28.) Subsequent to the arraignment, Bozeman was again transferred back to the custody of the federal government. (App. 56-57, 67, 87.) At no point did Bozeman ever request to be transferred back to federal custody after having been brought to Covington County. (App. 74.) Nor is there any evidence that he knew that such a transfer was contemplated.[2]

---

[2] In fact, Bozeman did not know of the plan to transfer him back, and the transfer took both Bozeman and his newly appointed counsel by surprise. The Petitioner and the *Amici* suggest that one ought to object to something that one does not know is about to happen. Brief for Petitioner at 33-34; Brief of the United States as *Amicus Curiae* Supporting Petitioner at 6; Brief of the National Association of Extradition Officials as *Amicus Curiae* in Support of the State of Alabama at 18.

It is rather presumptuous for one who was not present to claim that "those involved understood that Bozeman was to be returned to Florida after the arraignment." Brief of the National Association of Extradition Officials as *Amicus Curiae* in Support of the State of Alabama at 18. Moreover, it is a false claim. The arraignment took place in the judge's chambers at the Covington County Courthouse (App. 113), and the judge's comment about filling out some forms "before you leave" referred either to leaving the judge's chambers or to leaving the courthouse to return to the Covington County Jail approximately two miles away. (Bozeman did fill out the forms before leaving the courthouse; Sandra S. Sansom, the notary before whom Bozeman swore on January 24, 1997 to the truth of his indigency affidavit (App. 16.), works at the Covington County Courthouse as the judicial assistant to one of the circuit court judges.) On the related point, Bozeman's counsel did have Bozeman's

Following the post-arraignment transfer in the present case, Bozeman's counsel filed a Motion to Dismiss claiming that his transfer prior to trial violated the Interstate Agreement on Detainers (IAD).[3] (App. 32-33.) Bozeman had previously filed a *pro se* motion claiming that his transfer in November of 1995 had violated the IAD. The *pro se* motion had been mailed before Bozeman left the federal penitentiary, and ironically, it arrived and was stamped filed on January 24, 1997, the same day as Bozeman's arraignment.[4] (App. 18-20.) Bozeman's counsel subsequently filed a memorandum brief that also raised the issue that the transfer to Covington

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address; it was 290 Hillcrest Drive, Andalusia, AL 36420, the address of the Covington County Jail, the same address shared by numerous clients of Bozeman's counsel.

Neither the judge nor the district attorney made any mention at the arraignment of the impending transfer which might have alerted Bozeman or his counsel. The forms that indicated that Bozeman would be returned to the federal penitentiary following arraignment were not provided to Bozeman until long after the transfer. Some of the documents showing this (the ones that made it into the record on appeal) were produced in response to Bozeman's discovery requests for the hearing on his motion to dismiss. (App. 43-44, 51-52.) Other documents that Bozeman's counsel obtained from the Federal Penitentiary in Marianna, Florida (the penitentiary did not provide copies until long after the record on appeal had already been completed, although the documents were requested from the penitentiary on March 3, 1997 after the District Attorney's Office initially failed to cooperate with Bozeman's discovery requests) confirm what is shown by the forms in the record: Bozeman had no notice that he was going to be transferred back to the federal penitentiary before trial.

[3] The Interstate Agreement on Detainers (IAD) is also known as the Uniform Mandatory Disposition of Detainers Act (UMDDA). The Agreement is codified in Code of Alabama, 1975, § 15-9-81. Unless otherwise specified, the version of the IAD codified in the Code of Alabama has been used in preparing this brief.

[4] The certificate of service on the *pro se* motion states that it was mailed to the Clerk of the Circuit Court for Covington County, Alabama on January 20, 1997 and that there was an "[a]dditional copy for State Prosecutor." (App. 20.)

County in November of 1995 while the shooting charges were pending (although there was no indictment) also violated the IAD. (App. 37-42.) The memorandum brief also made it clear that Bozeman claimed a violation based on Article IV of the IAD "because the State filed a detainer and obtained custody of the Defendant." (App. 42.)

The trial court deferred consideration of the IAD issue until after trial.

> **THE COURT:** . . . . Mr. Bozeman has filed certain motions seeking dismissal of this action based on the Interstate Agreement on Detainers Act.
>
> I first knew of those motions this week, and this is my jury week, and I simply have not had an opportunity to have a hearing and deal with the motion at this point. And I have decided to handle the matter in this fashion: I am going to deny the motions related to the Interstate Agreement on Detainers Act out of hand, without a hearing, so that he can proceed with the trial today.
>
> However, the defendant, is not waiving his right to address that issue and he is not waiving the right to put on testimony about it and I am reserving to him his right to put on testimony about it and I am reserving to him his right to raise the issue by way of post-trial motion. And I will give the matter detailed consideration by way of post-trial motion.
>
> . . . .
>
> . . . . It is not my intention to cause you to waive anything by my proceeding today.

(App. 46-47.)

The case proceeded to trial, and the jury returned guilty verdicts on all five counts. (App. 114-115.)

Following the trial the following exchange took place.

> **THE COURT:** . . . . And at this time, Mr. Bozeman, you are remanded to the custody of the sheriff.
>
> **MS. LOGGINS:** Your Honor, we need to be sure that he is not sent back to Florida until this over.
>
> **MR. CHRISTENSEN:** I believe that issue is [moot], Your Honor. They have already done what is—.
>
> **MS. LOGGINS:** I think it is waived, but unless he wants to go back I think we need to make an effort that he remain.
>
> **MR. CHRISTENSEN:** I think the district attorney is conceding my point.
>
> **MS. LOGGINS:** I think Mr. Bozeman has waived his complaints.
>
> **MR. CHRISTENSEN:** He absolutely has not.
>
> **THE COURT:** Whatever has happened heretofore has happened heretofore, and whatever happens in the future you are going to have [to] house Mr. Bozeman until I can deal with these issues.

(App. 48-49.)

The Court scheduled a hearing on the IAD issues which was held on March 12, 1997. (App. 53.) Testimony from the District Attorney was taken at the hearing which established that Covington County had placed a detainer on Bozeman and had requested (and obtained) temporary custody of him from the federal authorities on three occasions. (App. 62-68.) Bozeman's counsel questioned the District Attorney regarding the sequence of events.

> Q So basically if I just run through the time line and I am just going to ask you whether you agree that this is accurate. Mr. Bozeman was arrested June 15,

1995; he came under federal custody at some point thereafter?

A Yes, he was arrested on federal charges in June of '95.

Q He was transferred back to Covington County, November 8, '95; and then returned to federal custody?

A Yes.

THE COURT: November 8, '95?

THE WITNESS: Yes.

Q A detainer was placed on him in October of '96 by Covington County?

A Yes, but it was on a different charge.

Q A different charge?

A Yes.

THE COURT: October of '96?

WITNESS: October of '96.

Q He was transferred back to Covington County January 23, '97?

A Twenty-fourth I think, but he might have been brought back on the 23rd. He was here on the 24th.

Q And then returned to federal custody?

A Yes.

Q And then he was brought back in February of 1997?

A Yes.

Q And remains here and present here in court today?

A Yes, he does.

Q Remains in the temporary custody of Covington County?

A Yes.

Q But he is a federal inmate. You have just temporary custody of him from the federal authorities?

A That's correct.

(App. 66-68.) Documents related to the detainer and the transfers were also introduced into evidence at the hearing. (App. 85-108.)

The trial court finally denied Bozeman's motion to dismiss on May 16, 1997. (Pet. App. 27-29.) The trial court limited its inquiry "to whether or not there has been an Article IV violation mandating dismissal of this case." (Pet. App. 27.) In a finding of fact, the court noted "that the defendant was transported from federal authorities to Covington County, Alabama, twice before trial." (Pet. App.27) The court stated that "It made much sense to bring him into the county briefly to see to those matters, and thereupon return him to the surroundings to which he was accustomed." (Pet. App. 27.) In so doing, the court declined to apply Article IV(e) as written. (Pet. App. 29.)

Bozeman moved for a new trial, claiming that the violation of the IAD had hampered his ability to communicate with his counsel in preparation for trial (Bozeman had been transferred back to the federal penitentiary within hours of his counsel having been appointed to him, and he did not return to Covington County until the day before his trial). (App. 56-58, 111-112.) Bozeman's request for a new trial was denied following sentencing on May 21, 1997. (App. 116.) Bozeman immediately gave notice of appeal. (App. 119.) On May 18, 1998, the Court of Criminal Appeals of Alabama affirmed the judgment by a memorandum opinion that completely ignored prior Alabama case law that interpreted the requirements of the IAD strictly. (Pet. App. 15-26.) The Supreme Court of Alabama reversed the judgment on April 21, 2000. (Pet. App. 1-14.) In so doing, the Supreme Court of Alabama held that "[t]his Court will not interject its interpretation of what the Legislature should have done," noting that "[t]he IAD is not ambiguous" and that "[i]t would require a tortured reading of the statute for us to conclude, as the State suggests, that a brief violation of the IAD can be

ignored." (Pet. App. 8.) The State of Alabama then petitioned this Court for a writ of certiorari which was granted on December 11, 2000. *Alabama v. Bozeman*, 121 S. Ct. 654 (2000).

SUMMARY OF THE ARGUMENT

The language used in the IAD is eminently clear and was properly interpreted by the Supreme Court of Alabama. The mandate of Article IV(e) provides a bright line for what is not permitted (transfer back to the sending State before trial) and the consequences of a violation (dismissal with prejudice). The purposes of the IAD include the efficient disposition of detainers, and when the statute is read as a whole, the Article IV sanctions are clearly an aid to the furtherance of the IAD's purpose.

The rules of statutory construction require Article IV(e) to be given effect as written, and nothing in the legislative history would contradict this. Nor did Bozeman waive his Article IV(e) rights. To the contrary, he vigorously asserted them. The Petitioner and the *Amici* are attempting to amend the statute, but they should more properly address such efforts to the Congress and the State legislatures. The judgment of the Supreme Court of Alabama should be affirmed.

ARGUMENT

I. The IAD Is Not Like Other Interstate Compacts.

Compacts between the States are permitted only with the consent of Congress. U.S. Const., art. I, § 10, cl. 3. Congressional approval of a compact gives it the character of a federal law. *Carchman v. Nash*, 473 U.S. 716, 719 (1985); *Cuyler v. Adams*, 449 U.S. 433, 438 (1981). It is, of course, necessary for the federal government to have the final say in the interpretation of such compacts as water-sharing deals or mutual waste disposal arrangements because an action by one State would have an effect on the other State in the compact.

In such a case, the compact's status as a federal law allows the federal court system to be the arbiter having the final say.

However, the IAD is different from most other compacts.[5] Other States would only be affected if a State chose not to follow the procedures for producing a prisoner.[6] That issue is not before the Court in this case. The decision that a receiving State makes in regard to the sanctions that are included in the IAD affects only that particular State; it does not invalidate sentences or charges in any other State.

Instead of mandating procedures for all States by passing a federal law that would have superceded the IAD, Congress chose to join the IAD as a co-equal member. "It would appear significant that Congress, by enacting P.L. 91-538, subjected itself to the transfer of federal prisoners, including those held for criminal offenses committed in the District of Columbia, to other states which were parties to the Agreement in accordance with its terms." *United States ex rel. Esola v. Groomes*, 520 F.2d 830, 835 n.17 (3d Cir. 1975). The IAD is both federal law and State law, and "[w]e have no more reason to suppose that the Supreme Court of [the State] seeks to undermine the IAD than we have to suppose that it seeks to undermine any other law of [the State]." *Reed v.*

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[5] It must be acknowledged, however, that previous IAD cases in this Court have not fully recognized the difference. *See New York v. Hill*, 528 U.S. 110, 111 (2000); *Reed v. Farley*, 512 U.S. 339, 347 (1994) ("Our precedent, however, has settled that issue: While the IAD is indeed state law, it is a law of the United States as well.") (citing *Carchman v. Nash*, 473 U.S. at 719).

[6] Such an action would be tantamount to a withdrawal from membership in the IAD. In fact, the member States do have the right to withdraw from the IAD although a withdrawal does not affect actions that have already been initiated at the time of the withdrawal. IAD, art. VIII. If a sending State that had not withdrawn refused to abide by the terms of the agreement, the receiving State could presumably bring a contractual action against it to enforce its rights under the IAD.

Farley, 512 U.S. 339, 355 (1994). The IAD allows member States to withdraw from the agreement unilaterally. IAD, art. VIII. Moreover, the IAD presumes that in a particular member State, parts of the IAD could be held to be unconstitutional. IAD, art. IX(1) ("If this agreement shall be held contrary to the Constitution of any state party thereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.").

A. The Decision Of The Alabama Supreme Court In *Ex parte Bozeman* Was Consistent With Alabama Precedent.

Prior Alabama case law dealing with the IAD has always construed the language of the statute strictly.[7] Most of the reported cases deal with Article III questions, and they have held that a prisoner who does not strictly comply with the statutory procedures waives the benefit of the IAD.[8] "[T]here must be strict compliance by the prisoner with the requirements of Article III." *Whitley v. State*, 392 So. 2d 1220, 1224 (Ala. Crim. App. 1980). "'[I]t is incumbent upon the [prisoner] . . . to comply with all the provisions of the act.'" *Turner v. State*, 584 So. 2d 925, 930 (Ala. Crim. App. 1991) (quoting *State v. Calderon*, 661 P.2d 781, 788 (Kan. 1983)). "A prisoner seeking to benefit from the statutory provisions must first meet the burden of compliance with the agreement." *McCallum v. State*, 407 So. 2d 865, 869 (Ala.

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[7] Presumably, the Alabama Legislature thought that the words of the IAD meant what they said when it voted for Alabama to join the IAD as a member State.

[8] This is not unique to Alabama, for in fact, cases from almost all jurisdictions require a prisoner acting under Article III of the IAD to adhere strictly to the technical requirements. *See* Leslie W. Abramson, "The Interstate Agreement of Detainers: Narrowing Its Availability and Applications, 21 *New Eng. J. on Crim. & Civ. Confinement* 1, 18-20 (1995).

Crim. App. 1981). "[O]nce an inmate bypasses the statutory procedure, the burden is on the prisoner to demonstrate strict compliance with the notification and certificate requirements of Sections (a) and (b) of art. III." *Id. See also Haywood v. State*, 501 So. 2d 515, 518 (Ala. Crim. App. 1986); *St. John v. State*, 473 So. 2d 658, 661 (Ala. Crim. App. 1985); *Seymore v. State*, 429 So. 2d 1188, 1194 (Ala. Crim. App. 1983).

However, at the time of Bozeman's transfer in violation of the IAD, there were also two reported Alabama cases that put the same burden of strict compliance on the State in Article IV situations. In *Gillard v. State*, 486 So. 2d 1323 (Ala. Crim. App. 1986), Alabama had obtained temporary custody of the defendant from federal authorities. However, after a brief stay in Bibb County, the defendant was returned to federal custody without having been tried. *Gillard*, 486 So. 2d at 1327. The Court of Criminal Appeals of Alabama held that "[t]he mandatory language and stringent penalties of the Agreement require party states to adhere strictly to the compact's provisions." *Gillard*, 486 So. 2d at 1326. The Court of Criminal Appeals of Alabama also rejected "the Attorney General's request that we remand the case for an evidentiary hearing to determine the reasons why appellant was returned to federal custody prior to trial." *Gillard*, 486 So. 2d at 1327. In effect the court strongly implied that, absent a waiver by the defendant, no reason could excuse the failure to comply with the IAD's anti-shuttling clause. In its decision to reverse the judgment, the court stated:

> Accordingly, we hold that the State violated Article IV(e), by returning appellant to the United States government prior to trial, and that such violation requires dismissal of the indictment with prejudice. The trial court committed reversible error in denying appellant's motion for dismissal.
>
> . . . .

> The judgment of the trial court is reversed and the case remanded with instructions that the conviction and sentence be set aside, and the indictment dismissed with prejudice.

Gillard, 486 So. 2d at 1327-1328.

Similarly, in *State v. Hill*, 638 So. 2d 1376 (Ala. Crim. App. 1993), an Alabama prisoner was transferred to Tennessee but was returned to Alabama without having been tried. An Alabama trial court then refused to extradite the prisoner because the anti-shuttling clause of the IAD had been violated by his return. *Hill*, 638 So. 2d at 1377. The Court of Criminal Appeals of Alabama affirmed because nothing in the record showed that the prisoner had waived his rights under Article IV(e) of the IAD. *Hill*, 638 So. 2d at 1380. In affirming the refusal to extradite, the Court of Criminal Appeals of Alabama noted that

> [t]he Agreement makes it clear that if a prosecuting jurisdiction takes the initiative to bring a prisoner, against whom it has lodged a detainer, from the jurisdiction of incarceration into its temporary custody for disposition of outstanding charges against the prisoner, the requesting jurisdiction must complete the prosecution before returning the prisoner to the jurisdiction of incarceration.

State v. Hill, 638 So. 2d 1376, 1379 (Ala. Cr. App. 1993).[9]

Thus, interpretation of the mandatory language of the IAD was well settled in Alabama at the time that Bozeman was transferred in violation of the IAD, and it should have come as no surprise to the Petitioner or anyone else that the Supreme Court of Alabama held as it did in *Ex parte Bozeman*, No. 1971759 (Ala. Apr. 21, 2000). (Pet. App. 1-14.)

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[9] Implicit in this holding is the fact that the sending State also has a stake in the procedures of the IAD being followed properly.

B. Other States Have Interpreted The IAD In A Similar Manner.

Alabama is not the only State to hold the view that words used in a statute mean what they say.[10] The mandatory language of the statute leaves no room for judicial interpretation of what might or might not interfere with its purpose. In a California case, *People v. Reyes*, 159 Cal. Rptr. 572 (Cal. Ct. App. 1979), Associate Justice Rouse noted that it would be reasonable and appropriate "to permit the defendant to return to her more commodious surroundings at [the federal penitentiary in] Pleasanton where she was undoubtedly involved in rehabilitation programs which are not available at the Contra Costa County Jail." *Reyes*, 159 Cal. Rptr. at 577 (Rouse, J., concurring). Nevertheless, although Rouse clearly did not like the result, he concluded that because Reyes had been transferred prior to trial, dismissal was "mandated by the statute in question and by the cases which interpret that statute." *Id.*

In a Michigan case, the prosecutor argued that the IAD should not require dismissal because "the transfer back was made in furtherance of the IAD's purpose." *People v. Browning*, 306 N.W.2d 326, 337 (Mich. App. 1981). The court's response was short and to the point: "the purpose of the transfer does not matter." *Id.*

New York was among the first group of States to adopt the IAD. In an early IAD case involving official ineptitude, the County Court for Queens County dismissed an indictment with prejudice.

> In any case, respect for the purpose of the agreement requires that the adverse consequences of such oversights as here occurred be visited upon the prosecution

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[10] It is perhaps a sign of our times that the Petitioner and the Amici seem to regard this as a benighted and archaic view.

> and not upon the prisoner. In that way the aim of the agreement is subserved by inspiring the officials concerned to gain knowledge of their duties and to perform them diligently and effectively. They are not likely to be so inspired if the prisoner is made the victim of their contributory inaction. . . . An embarrassment in one case will contribute to better performance in another. But unless *performance* is maintained as the standard of responsibility, a satisfactory appreciation of the measure of responsibility may not develop as soon as it should.

People v. Esposito, 37 Misc. 2d. 386, 394, 201 N.Y.S.2d 83 (Queens County Ct. 1960).

In *People v. Christensen*, 102 Ill. 2d 321, 465 N.E.2d 93 (1984), the Illinois Supreme Court upheld the literal language of the IAD.[11]

> Article IV states unequivocally that if trial is not had before the prisoner is returned, the indictment must be dismissed with prejudice. It is the practice of the court to give statutory language its customary meaning, unless so doing would be inconsistent with the purpose of the statute. Further, criminal statutes are to be strictly construed in favor of the accused. In addition, the agreement is a remedial statute, which must be liberally construed in favor of those whose problems it was meant to address.
>
> The State's argument that the prosecutor's action furthered rather than hindered the purposes of the statute by returning the defendant at the earliest possible time ignores the complexity of the problem which the interstate agreement was designed to resolve.

Christensen, 112 Ill. at 328-329.

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[11] The Appellee in *People v. Christensen* was not related to Bozeman's counsel.

More recently in Texas, capital murder charges were dismissed when a prisoner was returned to a federal penitentiary in Pennsylvania without having been tried. *State v. Sephus*, 32 S.W.3d 369 (Tex. App. 2000). The Court of Appeals of Texas wrote:

> the State urges only that during Sephus' second trip to Texas he waived the 120 day period allowed for trial under Article IV. However, under the literal reading of Article IV(e), which we must apply, the 120 day period for the State to try Sephus never came into play because a trial was already barred. The statute says an "indictment, . . . shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice" when a prisoner is returned to the sending state without being tried on that indictment. Thus, the statute operates, as the trial court concluded, to bar prosecution under the indictment. What occurs thereafter cannot revive a barred indictment. The State's waiver argument is without merit.

Sephus, 32 S.W.3d at 374 (citations omitted).

II. The Plain Language Of The IAD Is Susceptible Of But One Conclusion.

Although Bozeman contends that the Supreme Court of Alabama could properly decide its interpretation of the sanctions contained in the IAD for the State of Alabama, in a larger sense, that issue should be moot because there is but one possible interpretation of the unambiguous language of the statute, one that should apply to all member States.

A. The Canons Of Statutory Construction Demand A Literal Interpretation Of The Mandatory Language Used In The IAD.

"[T]he starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must

ordinarily be regarded as conclusive." *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). Every word in the statute should be considered to have been intended by the legislature.

> It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times.

Market Company v. Hoffman, 101 U.S. 112, 115-116 (1879).

Article IV(e) of the IAD uses the word "shall" twice: "such indictment . . . *shall* not be of further force or effect, and the court *shall* enter an order dismissing the same with prejudice." IAD, art. IV(e) (emphasis added). "The word 'shall' is ordinarily 'the language of command.'" *Anderson v. Yungkau*, 329 U.S. 481, 485 (1947) (quoting *Escoe v. Zerbst*, 295 U.S. 490, 493 (1935)). If the legislative bodies that adopted the IAD had wished to make the sanction discretionary, they would have used the word "may." *See, e.g., Lopez v. Davis*, 121 S. Ct. 714, 722 (2001) (if the use of "may" in a statute "functions not as a grant of discretion . . . but both as an authorization and command . . . , then Congress' use of the word 'may,' rather than 'shall,' has no significance").

This Court has previously recognized that rules, even procedural rules, need to be interpreted according to their plain language. In *Schiavone v. Fortune*, 477 U.S. 21 (1986), the issue was the interpretation of Federal Rule of Civil Procedure 15(c) which requires a party to have been substituted within the limitations period in order for the amendment substituting the party to relate back to the original

filing. This Court noted that the purpose of the rules is to "'help, not hinder, persons who have a legal right to bring their problems before the courts'" and that "decisions on the merits are not to be avoided on the basis of 'mere technicalities.'" *Schiavone*, 477 U.S. at 27. Nevertheless, this Court recognized the importance of the language of the rule.

> We do not have before us a choice between a "liberal" approach toward Rule 15(c), on the one hand, and a "technical" interpretation of the Rule, on the other hand. The choice, instead, is between recognizing or ignoring what the rule provides in plain language. We accept the Rule as meaning what it says.

Schiavone, 477 U.S. 21, 30 (1986).

Problems will arise when courts allow results to usurp the primacy of the clear language of a statute. "I am reluctant to assume, absent clearer indication, the Court's reliance on a method of statutory construction that allows us to rewrite a statute when the text does not address the specific situation before us or when it does not generate an outcome that we desire." *Henderson v. United States*, 517 U.S. 654, 679 (1996) (Thomas, J., Dissenting).

Justice Scalia has expressed similar concern about using legislative history when the text of a statute is perfectly clear. Commenting on a portion of the Speedy Trial Act, 18 U.S.C. § 3162(a)(2), he stated,

> The text is so unambiguous on these points that it must be assumed that what the Members of the House and the Senators thought they were voting for, and what the President thought he was approving when he signed the bill, was what the text plainly said, rather than what a few Representatives, or even a Committee Report, said it said. . . . This text is eminently clear, and we should leave it at that.

United States v. Taylor, 487 U.S. 326, 345, 108 S. Ct. 2413, 2424 (1988) (Scalia, J., Concurring). With regard to the IAD, it is not only Congress and the President who must be assumed to have understood the plain language of the statute but also forty-eight State legislatures and governors.

B. The Legislative History Of The IAD Does Not Contradict The Plain Language Used In The Statute.

The IAD was proposed by the Council of State Governments in 1956 based on a statement of principles from 1948. Council of State Governments, *Suggested State Legislation Program for 1957* (photo. Reprint 1972) (1956) 3-4, 74-75.

> The legislative history of the Agreement, including the comments of the Council of State Governments and the congressional Reports and debates preceding the adoption of the Agreement on behalf of the District of Columbia and the Federal Government, emphasizes that a primary purpose of the Agreement is to protect prisoners against whom detainers are outstanding.

Cuyler v. Adams, 449 U.S. 433, 448-449 (1981).

"The purpose of the Article IV provisions is to insure that interruptions of the sending jurisdiction's incarceration are minimized, and in exchange for the small added hardship placed on the prosecutor of the demanding state regarding time limits, a simplified procedure for obtaining the defendant's presence is made available." *United States ex rel. Esola v. Groomes*, 520 F.2d 830, 834 (3d Cir. 1975).

Moreover, it seems readily apparent that Congress thought that the language of the IAD meant what it said. If that were not so, what purpose was served in amending the federal version of the IAD by appending Section 9 in 1988?

18 U.S.C. App. 2, § 9.[12] By specifically amending the anti-shuffling provisions of Article III and Article IV when applied to the federal government, Congress must have understood the IAD's anti-shuttling language literally. The *Amicus* suggest that in passing Section 9, Congress was "responding to the decisions of the two courts of appeals that had parted company from the rest on this issue." Brief for the United States as *Amicus Curiae* Supporting Petitioner at 18. In fact, a cursory look at the dates of the cases cited shows that the circuits favoring a loose construction were the ones that "parted company" and that most of them did so after the enactment of Section 9.[13]

Even if one were to concede for the purposes of argument that the broad purposes of the IAD somehow support of the positions taken by the Petitioner and the *Amici*, such alleged purposes cannot overcome the clear language of the statute. In reversing the interpretation of the Comprehensive Crime Control Act of 1984 (CCCA) put forward by the United

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[12] The historical note to 18 U.S.C. App. 2, Section 9 states that it was added by Pub. L. 100-690, Title VII, § 7059, Nov. 18, 1988, 102 Stat. 4403.

[13] Petitioner acknowledges that the majority of the federal appeals courts have favored a non-literal reading of the anti-shuttling provisions. Those courts interpret the statute incorrectly, both under the IAD as originally enacted and as applied to the federal government under 18 U.S.C. App. 2, § 9.

Moreover, considerable deference ought to be accorded to the earliest State cases interpreting the IAD literally. Since they were closest in time to the original enactment, they would presumably have a more accurate sense of the statute's original intent. *See, e.g., People v. Esposito*, 37 Misc. 2d 386, 201 N.Y.S.2d 83 (Queens County Ct. 1960); *State v. Chirra*, 79 N.J. Super. 270, 191 A.2d 308 (N.J. Super. Ct. Law Div. 1963); *State v. West*, 79 N.J. Super. 270, 191 A.2d 758 (N.J. Super. Ct. App. Div. 1963); *State v. Mason*, 90 N.J. Super. 464, 218 A.2d 158 (N.J. Super. Ct. App. Div. 1966).

States Court of Appeals for the Second Circuit in *United States v. Rodriguez*, 794 F.2d 24 (2d Cir. 1986), this Court wrote:

> Additionally, and most impermissibly, the Court of Appeals relied on its understanding of the broad purposes of the CCCA, which included decreasing the frequency with which persons on pretrial release commit crimes and diminishing the sentencing discretion of judges. But no legislation pursues its purposes at all costs. Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law. Where, as here, "the language of a provision . . . is sufficiently clear in its context and not at odds with the legislative history . . . '[there is no occasion] to examine the additional considerations of "policy" . . . that may have influenced the lawmakers in their formulation of the statute.'" *Aaron v. SEC*, 446 U.S. 680, 695, 100 S.Ct. 1945, 1954, 64 L.Ed.2d 611 (1980) (quoting *Ernst & Ernst v. Hochefelder*, 425 U.S. 185, 214, n. 33, 96 S.Ct. 1375, 1931, n. 33, 47 L.Ed.2d 668 (1976)).

Rodriguez v. United States, 480 U.S. 522, 525-526, 107 S. Ct. 1391, 1393 (1987).

Respondent respectfully asserts that the IAD is sufficiently clear that no legislative history—and certainly none uncovered by the parties to this matter—can overcome the unambiguous language of Article IV(e).

C. Only By Affirming The Significance Of The Plain Language Of The IAD Can The Purposes Of The IAD Be Achieved.

Article IX of the IAD states that "[t]his agreement shall be liberally construed so as to effectuate its purposes." IAD, art. IX(1). The purposes of the IAD are set forth in Article I:

> The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of the agreement to encourage the expeditions and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

IAD, art. I. The legislative history of the IAD does not seem to be very extensive, but what history there is seems to confirm that the purposes of the IAD are to reduce the uncertainties that are detrimental to the rehabilitation of prisoners and to provide cooperative procedures that will ensure reduction in these uncertainties.

The Petitioner and the Amici have suggested that liberally construing the IAD so as to effectuate its purposes requires this Court to find that Bozeman actually benefited from his transfer. Such a view stands the statute on its head, presupposing that what the statute seeks to avoid is a good

thing and what it requires in Article IV is a bad thing. Obviously, it also ignores the clear mandate of the IAD. Since one important canon of construction is "that an agreement should be interpreted in such fashion as to preserve, rather than destroy, its validity (*ut res magis valeat quam pereat*)," *Wright v. Universal Maritime Service Corporation*, 525 U.S. 70, 81 (1998), one cannot "liberally construe" in a manner that invalidates large portions of the agreement.

Dismissal with prejudice is the sanction chosen by the IAD for violation of its provisions. Article III(a) and Article IV(c) dictate specific time periods within which a prisoner must be tried. Article V(c) requires dismissal with prejudice if those periods are breached.[14] Article III(d) has an anti-shuttling provision that requires dismissal with prejudice if the prisoner is not tried before being returned to the original place of incarceration. A nearly identical provision, the one at issue in this matter, is contained in Article IV(e).[15] Clearly, this same

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[14] "The adoption of the dismissal sanction of V(c) was not to protect the defendant from being prejudiced . . . but 'was regarded as essential to produce general compliance with the statutory mandate.'" *Nelms v. State*, 532 S.W.2d 923, 927 (Tenn. 1976) (quoting *State v. Lippolis*, 107 N.J. Super. 137, 257 A.2d 705, 710 (1969)).

[15] Bozeman was shuttled within hours of his arraignment; this could not be the intent of Article IV.

> "Article IV(c) permits the retention of temporary custody for as long as four months. There is no discernable reason why a prisoner should languish in the demanding jurisdiction for four months, unless it be to assure his presence for pretrial necessities. One rendition with a maximum duration of 120 days accomplishes this without unnecessary peregrinations. Clearly, unless this be the intent of the Agreement, the 120 days is totally unnecessary."

In re Blake, 99 Cal. App. 3d 1004, 1017-1018, 160 Cal Rptr. 781 (1979) (quoting *United States v. Sorrell*, 413 F. Supp. 138, 141-142 (E.D. Pa. 1976).

sanction could not have been used so frequently without it being specifically intended to be used.

In fact, dismissal with prejudice supports the goals of the IAD. "Because the Detainers Act also states that its goal is to 'encourage the expeditious and orderly disposition of such charges . . . based on untried indictments,' the result in this case cannot be said to be absurd." *State v. Sephus*, 32 S.W.3d 369, 373 n.2 (Tex. App. 2000) (dismissal of capital murder charges because of shuttling). Both shuttling and the denial of a speedy trial inhibit the expeditious and orderly disposition of charges and thus interfere with the rehabilitation of the prisoner. Since imposing a lesser sanction would merely prolong the disruption, dismissal with prejudice is the only appropriate way to minimize the harm done.

Also, the statutory scheme of the IAD recognizes a temporal, legal, and ontological primacy of the conviction in the sending State over the charges in the receiving State.[16] The sending State's conviction occurred earlier than the proceedings in the receiving State.[17] Absent the cooperative procedures of the IAD, the sending State would have no obligation to provide the prisoner to the receiving State.[18]

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[16] The prisoner does not lose the presumption of innocence in the receiving State just because he or she has been convicted of another charge in the sending State. The Petitioner ignores this presumption when arguing that with a strict interpretation of the IAD, "the prisoner can, in effect, get away with murder." Petition for a Writ of Certiorari at 18. At best, a conviction in the sending State remains merely *in potentia* until after judgment is pronounced. That stage would not even be reached if a violation requiring dismissal occurred prior to trial.

[17] This is so regardless of whether the alleged crime in the receiving State occurred before or after the act that is the basis of the conviction in the sending State.

[18] An obvious exception would be when the Supremacy Clause would permit the federal courts to obtain a prisoner pursuant to a writ of *habeas corpus ad prosequendum*.

The IAD recognizes the prior claim of the sending State in several ways. The prisoner is still considered to be an inmate of the sending State. IAD, art. V(g). The receiving State is not allowed to keep the prisoner for an extended period of time. IAD, art. III(a) (180 days from delivery of request); IAD, art. IV(c) (120 days from arrival in the receiving State). While in the temporary custody of the receiving State, the prisoner is required to be housed in a suitable facility so that the sending State does not need to worry about an escape while the prisoner is in the temporary custody of the receiving State. IAD, art. V(d). If the prisoner does escape, it is considered to be an escape from the sending State. IAD, art. V(g). The temporary custody is an accommodation made by the sending State solely for the purpose of permitting prosecution on the charges in the receiving State on which detainers against the prisoner are based. IAD, art. V(d). Because the temporary custody is merely an accommodation, the receiving State is responsible for all costs during the temporary custody.[19] IAD, art. V(h). The prisoner is to be returned to the sending State as soon as possible after the proceedings in the receiving State are concluded. IAD, art. V(e). Dismissal with prejudice is required if the mandatory time periods are violated or if shuttling occurs because such actions interfere with the sending State's interest in the prisoner.[20] *See* IAD, art. III(d), art. IV(e), art. V(c) ("in the event that an action on the indictment . . . is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the

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[19] The shuttling of Bozeman may have been due to this provision of the IAD.

[20] Another way of conceptualizing Article III and Article IV is to think of them as setting forth a definite and an indefinite time period. The definite period is 180 days or 120 days respectively, and the indefinite period is "prior to the return of the prisoner to the original place of imprisonment," IAD, art. III(d), or "prior to the prisoner's being returned to the original place of imprisonment," IAD, art. IV(e).

indictment . . . has been pending shall enter an order dismissing the same with prejudice").

Part of the sending State's interest is in the rehabilitation of the prisoner, and rehabilitation is something that is solely in the domain of the sending State.[21] The court in the receiving State is not in the position to evaluate the rehabilitation that is taking place in the sending State and it cannot positively affect the rehabilitation because it is outside its jurisdiction. The trial court in the receiving State is given jurisdiction only over the things that it is in a position to evaluate: namely, whether the time limits have been complied with (including the tolling of the time under Article VI(a) of the IAD), whether there has been a transfer in derogation of the plain language of the statute, and whether the prisoner has waived any of his rights under the IAD. *See United State ex rel. Esola v. Groomes*, 520 F.2d 830, 842 n.4 (3d Cir. 1975) (Garth, Cir. J., concurring) ("As the remedy provided by the Agreement for acts of noncompliance is dismissal of the indictment 'with prejudice,' it follows that any allegations that the Agreement has been violated are to be presented to and resolved by only the courts of the jurisdiction where the indictment is pending."). When there is a violation in the receiving State, damage is done to the prisoner's certainty as to his future and his program of rehabilitation, but the court of the receiving State cannot do anything to remedy that since it is out of its jurisdiction. Consequently, dismissal with

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[21] In *United States ex rel. Esola v. Groomes*, 520 F.2d 830, 835 (3dd Cir. 1975), the rights of the sending State were noted along with the rights of the prisoner.

> Thus, while Esola's rights to a speedy trial and effective rehabilitative treatment were allegedly violated by the multiple transfers, the rights of the United States were also violated by the same transfers. The Federal Government, through joinder in the Agreement, forfeited its right to exclusive control over Esola during the term of the sentence imposed by the district court.

prejudice stands not as an arbitrarily harsh sanction but as the only practical choice to minimize the damage that has been done. Dismissal with prejudice, with a return of the prisoner to the jurisdiction where he is an inmate, is thus consonant with the purposes of the IAD. In sum, construing the purposes liberally means to give *effect* to this sanction in the circumstances in which the IAD calls for it. "The remedial nature of this legislation requires that it should be construed liberally in favor of those it was intended to benefit." *Nelms v. State* 532 S.W.2d 923, 927 (Tenn. 1976) (citing *Commonwealth v. Fisher*, 451 Pa. 102, 301 A.2d 605 (1973)). "The legislation adopting the agreement is obviously remedial in character and, thus, by familiar principle should be construed liberally in favor of the prisoner." *State v. West*, 79 N.J. Super. 379, 384, 191 A.2d 758 (N.J. Super. Ct. App. Div. 1963).

Like the Petitioner and the *Amici*, the trial court did not like the results of a literal interpretation of the IAD.[22] The trial court thus reached several conclusions that were not based on any evidence whatsoever.[23] The trial court found that bringing Bozeman to Alabama briefly for arraignment and then "return[ing] him to the surroundings to which he was accustomed . . . appears to have been conservative of *defendant's* interest in maintaining any course of

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[22]The trial court obviously went to great lengths to avoid giving effect to the literal language of the IAD. The trial concluded on February 28, 1997. (App. 48.) The hearing on the IAD issue was held on March 12, 1997. (App. 53.) The motion to dismiss was not denied until May 16, 1997. (Pet. App. 27.) On April 25, 1997, Bozeman had filed a motion objecting that Article V(e) of the IAD was being violated by failing to return him to the sending State in a timely manner after the conclusion of proceedings in the receiving State. (App. 109-110.)

[23]Despite the urging of the District Attorney (App. 79-82), the trial court did not make any finding of waiver, and of course, there was no evidence of waiver. The evidence did clearly show that there was a violation of the anti-shuttling clause of the IAD. (App. 53-108.)

rehabilitation available to him in federal prison." (Pet. App. 28.) The trial court expressed concern that "it is often difficult to acquire [a federal prisoner] indefinitely without encountering substantial reluctance from federal authorities." (Pet. App. 28.) The trial court also stated that "many prison inmates don't care to stay in our county jail for two or three months pending trial." (Pet. App. 28.) Finally, the trial court asserted that "[t]he transfers involved in this case appear to be wholly consistent with the goal of the IAD to expedite the prosecution of state charges without interfering with any rehabilitative programs of the federal government." (Pet. App. 28-29.)

First, the trial court ignored the clear language of the statute. Second, the reasons that it gave were patronizing, presumptuous, and probably wrong. Per the discussion above, just as a court in the receiving State cannot order rehabilitation in a sending State because it is not in that court's jurisdiction, so too the court in the receiving State has no way of knowing whether a transfer "is conservative of *defendant's* interest in maintaining any course of rehabilitation available to him." Third, the trial court's concern about the reluctance of federal authorities was unfounded. Upon the proper request by the District Attorney, the federal authorities were *required* to comply by making Bozeman available for trial in Alabama. IAD, art. IV(a) ("appropriate officer . . . shall be entitled to have a prisoner . . . made available"). *See also People v. Lincoln*, 42 Colo. App. 512, 515-516, 601 P.2d 641 (1979) ("the Agreement does not accord the prison official discretion to comply or not to comply with its terms"). Similar concerns were raised in *United States ex rel. Esola v. Groomes*, 520 F.2d 830 (3d Cir. 1975).

> Finally, the state asserts that the federal authorities at Danbury might have been reluctant to agree to the extended temporary custody which is involved in this

> case. The answer to this question is that had a proper Article IV(a) request for temporary custody been made, absent intervention by the executive, Article V(a) would have entitled New Jersey to such custody. The potential reluctance of the Danbury authorities is no bar to the imposition of Article IV(e) sanctions.

United States ex rel. Esola v. Groomes, 520 F.2d 830, 839 n.28 (3d Cir. 1975).

Fourth, the trial court's general finding that "many prison inmates don't care to stay in our county jail" was purely speculative as applied to Bozeman.[24] No one asked Bozeman where he wanted to be housed. *Cf.* 18 U.S.C. App. 2 § 9(2) (allowing a court to return a prisoner only after notice and the opportunity for a hearing). Furthermore, the IAD requires the receiving State to house the prisoner, IAD, art. V(d), and pay the associated costs, IAD, art. V(h). In fact, the IAD presumes that a prisoner may have to stay in a county jail for up to four months, whether the prisoner cares to or not.[25] IAD, art. IV(c).

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[24] Incidentally, the Covington County Jail was relatively new at the time of these events; even if the trial court's presumption might have been true regarding most prisoners and the old jail, it is far less certain regarding the new jail.

[25] The time could even be extended beyond that time by a continuance granted "for good cause shown in open court, the prisoner or his counsel being present." IAD, art. IV(c). The plain language here indicates that the continuance could be granted over the prisoner's objection as long as there is "good cause shown in open court." In other words, there is a possible exception to the definite time limit. It should be noted that there is no parallel construction for the anti-shuttling clause; no possible exception is given. IAD, art. IV(e). Although a prisoner can waive his right not to be shuttled, a prisoner cannot be compelled to be shuttled without the State incurring the mandatory sanction of dismissal with prejudice. *Cf.* 18 U.S.C. App. 2 § 9(2) (allowing an exception for the federal government where there would be an opportunity for the prisoner to object but which the court can presumably overrule).

Finally, it was completely speculative for the trial court to conclude that the transfer of Bozeman was "wholly consistent with the goal of the IAD to expedite the prosecution of state charges without interfering with any rehabilitative programs of the federal government." (App. 29.) There was no evidence presented from which the trial court could have made such a finding. The trial court did not know whether Bozeman was involved in any rehabilitative programs. The assumption that a relatively short stay in the receiving State would allow the prisoner to pick up where he left off in the sending State is perhaps understandable, but inaccurate.[26] Besides losing a place in any programs that a prisoner might have been involved in at the time of his removal, it is extremely unlikely that a prison would allow a prisoner to fill a space in a rehabilitative class when the prison is aware that the prisoner is going to be removed again at some time in the near future. In fact, the mere fact that there is a detainer may make an inmate ineligible for rehabilitative treatment. A prisoner who has a detainer filed against him "often must be kept in close custody, which bars him from treatment such as trustyships, moderations of custody and opportunity for transfer to farms and work camps." *Suggested State Legislation Program for 1957* at 74. *See also Nash v. Jeffes*, 739 F.2d 878, 882-883 (3d Cir. 1984) (listing ten consequences of prisoners who have detainers outstanding from *Cooper v. Lockhart*, 489 F.2d 308, 314 n.10 (8th Cir. 1973)). In Bozeman's case, the transfer had the added detriment of preventing him from meeting with his lawyer to prepare for trial. (App. 111-112.) His transfer was not in furtherance of the goal of the IAD.

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[26] *See, e.g.*, U.S. Department of Justice, Federal Bureau of Prisons, *Receiving and Discharge Manual* (1997) (detailing the elaborate procedures that must be followed in searching and keeping an inmate isolated from the general population both before and after transfer to another jurisdiction) (available on the internet at www.bop.gov).

III. Harmless Error Does Not Apply To The IAD.

The Petitioner has attempted to adopt the unfounded statements of the trial court by claiming that Bozeman was not harmed by his transfer and that the requirements of the statute should therefore be ignored. A similar situation occurred in *Hughes v. Dist. Ct.*, 197 Colo. 396, 398, 593 P.2d 702 (1979), where the prisoner had been brought to the Denver District Court on October 19, 1977 and trial dates were set for January of 1978. He was then transported to the federal penitentiary in Leavenworth, Kansas on October 22, 1977. *Id.* The State claimed "that the rehabilitative purposes of the Interstate Agreement on Detainers, as expressed in Article I, would have been subverted had the [prisoner] not been sent to Leavenworth pending trial." *Id.* at 401. The Colorado Supreme Court responded, "We do not agree." *Id.* (noting that nothing in the record indicated a request for a transfer by the prisoner). The Petitioner's attempt to shift the issue in the present case should be similarly resisted. "[T]he incidence of absence of prejudice to defendant . . . is quite irrelevant to the scheme and objectives of the act." *State v. Lippolis*, 107 N.J. Super. 137, 144, 257 A.2d 705 (N.J. Super. Ct. App. Div. 1969).

A. Unlike The Other Situations Cited In Petitioner's Harmless Error Argument, The Sanction For Violation Of The IAD Is Included In The Clear Language Of The Statute.

The Petitioner suggests applying a harmless error rule to the IAD, but none of the cases cited by the Petitioner deals with a statute that contains a mandated sanction of dismissal as the IAD does in several instances.[27] Also, there is a discernable pattern readily apparent in the cases cited by the

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[27] *See* Respondent's Brief in Opposition at 11-14.

Petitioner: harmless error analysis is applied to errors that take place *in court proceedings*, usually at the trial. Questions of harmless error hinge upon whether the error had any substantial influence on the outcome of the proceedings.

In the present case, however, the error was not made during court proceedings, and, indeed, never would be for a violation pertaining to Article III or Article IV. In fact, if the trial court had adhered to the plain language of the statute, Bozeman would not have even been tried in Alabama. Therefore, one cannot accept the cavalier assertion of the Petitioner that this case concerns "a mere technical, procedural violation not resulting in any harm to Bozeman." Brief for Petitioner at 34. It is impossible to imagine how the enormous difference between an indictment being dismissed and not being dismissed could ever be characterized as "harmless."

B. The Petitioner Attempts To Reverse The Burden Of Proof.

"The burden of compliance with the procedural requirements of the IAD rests upon the party states and their agents; the prisoner, who is to benefit by this statute, is not to be held accountable for official administrative errors which deprive him of that benefit." *Pittman v. State*, 301 A.2d 509, 514 (Del. 1973). It is curious that although it was the District Attorney was the one who caused the violation of Article IV(e), the Petitioner attempts to place the burden of showing that the error was not harmless upon the Respondent.

Bozeman maintains that a harmless error analysis is not proper for the IAD,[28] but for the sake of argument, if a

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[28]In *Commonwealth v. Fisher*, 451 Pa. 102, 106, 301 A.2d 605 (1973), the Pennsylvania Supreme Court criticized another court because it had "freighted the statute with considerations of prejudice and the lack thereof, emanations which we fail to perceive and accordingly refuse to adopt."

harmless error analysis were permitted, it should be the burden of the receiving State to prove that an error was harmless once the prisoner has made a *prima facie* showing that there was a violation. Compare, for example Rule 56 of the Federal Rules of Civil Procedure, in which the moving party has "an initial burden of proof, which shifts to the nonmoving party if satisfied by the moving party." *Celotex Corporation v. Catrett*, 477 U.S. 317, 330 (1986) (Brennan, J., dissenting). Bozeman proved that there was a transfer in violation of Article IV(e); there is no dispute about this fact. At that point, if there were to be a harmless error analysis, the burden would have shifted to the prosecution, but in fact, the prosecution put on no evidence. *See United States v. Olano*, 507 U.S. 725, 734 (1993) (discussing Federal Rule of Criminal Procedure 52(a) where the defendant has objected and the burden is on the government to prove harmless error and Rule 52(b) where the burden shifts to the defendant to prove that he was prejudiced by a forfeited plain error).

C. Imposition Of A Purported Harmless Error Rule As Proposed By the Petitioner Would Vitiate The Unambiguous Language Of The IAD.

There is, of course, no constitutional or common law right not to be shuttled; the right is purely statutory. As such, the only matter to be considered is strictly the language of the statute.[29] As a practical matter, if the IAD is not strictly

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[29] It is ironic that the Petitioner evidently has a flexible standard for when the language of a statute ought to be construed strictly. In another context in dealing with another purely statutory right, the Petitioner has approvingly quoted the United States Court of Appeals for the Eleventh Circuit:

> [E]lection contests exist only by virtue of statutory enactment and such statutes are to be strictly construed. . . . ". . . An election contest being purely statutory, the courts are limited in their investigation to such subjects as are specified in the statutes. The

construed, the sanctions contained within it are meaningless. Neither the Petitioner nor the *Amici* have cited any cases where the sanction of dismissal was imposed by a jurisdiction that did not interpret the statute literally, and if such cases exist, Respondent has not been able to find them. In short, the Petitioner would like this Court to adopt a harmless error standard for the IAD because the Petitioner knows that if that happens, it no longer will need to conform its actions to the statute. The deterrent effect of the possibility of dismissal with prejudice will no longer exist. By the Petitioner's view, "this law has wax teeth and is little more than a legislative exercise in futility." *People v. Esposito*, 37 Misc. 2d 386, 391, 201 N.Y.S.2d 83 (Queens County Ct. 1960).

IV. The "Bright Line" Set Forth In The Statute Is Preferable To A Balancing Test.

The IAD is remarkable for its clarity. If a prisoner is not tried within the applicable time periods, the indictment must be dismissed with prejudice. IAD, art. V(c). If the prisoner is returned to the sending State before being tried, the indictment must be dismissed with prejudice. IAD, art. III(d) & art. IV(e). The clear mandates of the IAD provide a bright line test that provides certainty for all parties involved. A balancing test such as the *Amicus* proposes would lead inevitably to uncertainty and the waste of judicial resources.

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remedy is not to be extended to include cases not within the language of the statute; and the right of contest is not to be inferred from doubtful provisions."

Brief for the State of Alabama, the Attorney General of Alabama, and the Secretary of State of Alabama as *Amici Curiae*, supporting Reversal in Case No. 00-836, *George W. Bush v. Palm Beach County Canvassing Board*, at pages 26-27 (quoting *Roe v. Alabama*, 43 F.3d 574 (11th Cir. 1995) (quoting *Longshore v. City of Homewood*, 171 So. 2d 453, 455 (1965)).

A. The Balancing Test Requested By The *Amicus* Is A Chimera.

Although the Amicus encourages the Court to follow the circuit courts of appeal that "have chose to examine the particulary circumstances in light of the purpose of the law," Brief of the National Association of Extradition Officials at 9, the Amicus notes that "[u]nfortunately, none of the courts employing this approach has articulated any test by which each case can be judged. As a result, these decisions offer little predictive value." *Id.* at 10. In fact, the cases offer great predictive value, for as the *Amicus* has stated, those circuits "have consistently held no dismissal is warranted." *Id.* at 9-10. The only balancing that has taken place in these circuits looks more like contortions done by the courts to avoid dismissing the charges. "If the trial court has the power, it will in practice be loath to deny almost any application for validation of a prosecutor's lapse, and the policy of the statute will suffer inevitable erosion." *State v. Lippolis*, 107 N.J. Super. 137, 144, 257 A.2d 705 (N.J. Super. Ct. App. Div. 1969).

B. No Balancing Test Could Be Imposed Upon The IAD Without Doing Violence To The Clear And Unambiguous Language Of The Statute.

As discussed at some length above, the IAD forms a coherent whole. The clear language mandating dismissal with prejudice for certain violations of the statutory requirements fits logically with the entire statutory scheme. The *Amicus* urges an interpretation of the IAD that is in keeping with what it says is the spirit of the IAD, yet that spirit seems to be directly at odds with the unambiguous language of the statute.

> Before discussing this argument, it may not be improper to premise, that, although the spirit of an instrument,

> especially of a constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words. It would be dangerous in the extreme, to infer from extrinsic circumstances, that a case for which the words of an instrument expressly provide, shall be exempted from its operation. Where words conflict with each other, where the different clauses of an instrument bear upon each other, and would be inconsistent, unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words, is justifiable. But if, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case, would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application. This is certainly not such a case.

Sturgis v. Crowninshield, 17 U.S. 122, 202-203 (1819). Of course, the *Amicus* premises its argument on the conclusion that the "harsh remedy of dismissal" is a ridiculous result that could not possibly have been intended. The fact that Congress and forty-eight State legislatures said differently in passing the IAD indicates that dismissal is not a result that all mankind would unite in rejecting.

C. The Bright Line Test Already Contained In The Statute Conserves Judicial Resources And Protects The Interests Of All Parties Intended To Benefit From The IAD.

The Delaware Supreme Court has held that the IAD must be construed "in favor of the prisoner because the State, through its agents and its control of the procedural aspects of the IAD, controls the only ultimate guarantee of performance

for the benefit of the prisoner." *Pittman v. State*, 301 A.2d 509, 513 (Del. 1973). The "performance" standard must be to follow the clear language of the statute, including the bright line test for when dismissal with prejudice is mandated. Anything less would require extensive judicial inquiry into matters outside the jurisdiction and competence of the court of the receiving State and would inevitably produce protracted litigation and appeals. In contrast, the bright line contained in the statute makes the inquiry simple for the court of the receiving State: Has there been a transfer back to the sending State before trial? If so, has there been a waiver? If not, then the case must be dismissed. This simple statutory scheme produces efficient results and protects the interests of both the prisoner and the sending State.

The proposal that some violations can be ignored or balanced against some larger concerns because they cause no prejudice to the prisoner is foreign to the structure and purposes of the IAD, besides being purely speculative. The Colorado Supreme Court has noted:

> There is no requirement in the Interstate Agreement on Detainers that a prisoner demonstrate that prejudice resulted from a violation of its provisions. It does not appear that such a requirement would further the purposes of the Agreement as spelled out in Article I, and we decline to adopt such a construction of the Agreement.

Hughes v. Dist. Ct., 197 Colo. 396, 402, 593 P.2d 702 (1979). Obviously, if Congress and the State legislatures had wished there to be a requirement that a prisoner show prejudice, it could have included language to that effect in the IAD. Wisely, it did not do so. Such a requirement would have required the courts to find facts on circumstances outside its jurisdiction and thus outside its control. The bright line contained in the statute is much to be preferred. As stated in dissent by Justice Hall of the Georgia Supreme Court:

> I believe that when multiple jurisdictions agree with one another through a uniform act for equivalent, reciprocal, and orderly treatment of prisoners desired by them both, it is contemplated that the Act will be enforced according to its plain terms to achieve simplicity and certainty. Both simplicity and certainty will be lost forever under the majority opinion. That opinion necessarily means that when a prisoner's rights under the Act have been violated, and when he has in no fashion waived them, nonetheless the state will be accorded a full judicial hearing at which time it may introduce evidence that its violation of the act did no harm to the prisoner's rehabilitative opportunities in the original place of imprisonment, and therefore the prisoner's remedies under the Act should not apply. This interpretation makes the Act a great spawner of trivial litigation over attempted proof of an intangible (what is a significant interference with a rehabilitative process?) And I cannot agree that this accords with the true purposes of the Act.

State v. Sassoon, 242 S.E.2d 121, 124 (Ga. 1978) (Hall, J., dissenting).

V. The Respondent Made No Waiver Of His Rights Under The IAD And The *Amicus*' Attempt To Find Waiver Fails.

Waiver of the statutory rights accorded by the IAD is permissible. *New York v. Hill*, 528 U.S. 110, 120 S. Ct. 659 (2000). However, Bozeman made no waiver; the record is quite clear about this.[30] "[C]ourts indulge every reasonable

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[30] The District Attorney first made the allegation of waiver in an off-the-record discussion in the judge's chambers in which she cited a number of Alabama cases dealing exclusively with Article III of the IAD. She reiterated this position following the trial. (App. 49.) Nevertheless, neither the District Attorney nor anyone else since that time has been able

presumption against waiver." *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 393, 57 S. Ct. 809, 812 (1937) (whether parties in a civil action waived their right to a jury trial by both submitting requests for a directed verdict). "Waiver is the 'intentional relinquishment or abandonment of a known right.'" *United States v. Olano*, 507 U.S. 725, 733 (1993) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). Of course, certain statutory rights such as those afforded by the IAD can be waived without full knowledge of the rights by requesting treatment contrary to the rights. *Webb v. Keohane*, 804 F.2d 413, 415 (7th Cir. 1986). That is not at issue here because Bozeman was aware of at least some of his IAD rights as shown by his *pro se* motion. (App. 18-20.) However, there is nothing in the record that indicates waiver. "Presuming waiver from a silent record is impermissible." *Carnley v. Cochran*, 369 U.S. 506, 516 (1962). This is also true when the right is statutory. *Wright v. Universal Maritime Service Corporation*, 525 U.S. 70, 80 (1998) ("a waiver must be clear and unmistakable").

Unlike *New York v. Hill*, 528 U.S. 110, 118 (2000), in which the defendant had agreed to a trial date outside the statutory period and then tried to make "a distinction between waiver proposed and waiver agreed to," Bozeman neither proposed his transfer nor agreed to it. In short, he made no waiver of his rights under Article IV(e). "Where the transfer back is not done at the request of defendant or his attorney, we believe that the state should be charged with the

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to point to any place in the record where a waiver occurred. The conclusions of the *Amicus* that "those involved understood that Bozeman was to be returned to Florida after the arraignment," Brief of the National Association of Extradition Officials as *Amicus Curiae* in Support of the State of Alabama at 18, are baseless and are discussed *supra* at note 2. The other *Amicus* also seems to assume that all parties knew of the impending transfer by suggesting that Bozeman should have objected. Brief of the United States as *Amicus Curiae* Supporting Petitioner at 6.

responsibility therefor. In no other way can the defendant's right to final disposition before return be adequately safeguarded." *People v. Browning*, 306 N.W. 2d 326, 335 (Mich. App.1981).

VI. Imposition Of A "*De minimis*" Rule Upon The IAD As Proposed By The *Amicus* Would Ignore The Clear Directive Of The Legislative Bodies That Have Adopted The IAD.

The *Amicus* suggests that this Court impose a "*de minimis*" analysis upon the IAD. First, it is unclear what interest the United States has in supporting the Petitioner in this matter. Bozeman's Federal sentence was not voided by the decision of the Alabama Supreme Court. Only the Alabama charges were affected. In fact, if the situation had been reversed and the United States had been the receiving State and had transferred Bozeman back to Alabama before trying him, the dismissal could have been with or without prejudice. 18 U.S. C. App. 2, § 9(1).[31] Be that as it may, since the United States has chosen to support the Petitioner, it has put forward a *de*

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[31] This would still be a violation of the IAD and dismissal would be mandated. However, the trial court is given some discretion regarding the severity of the sanction (with or without prejudice) when the United States is the receiving State. The *Amicus* is simply wrong in suggesting that 18 U.S.C. App. 2, § 9(2) "essentially codifies the position taken by the majority of federal courts of appeals" that do not find violations of the IAD when a prisoner is returned to the sending State prior to trial. Brief of the United States as *Amicus Curiae* Supporting Petitioner at 18. The interpretations of these courts would also seem to excuse compliance with the federal amendment. Section 9(2) requires that the transfer be done "pursuant to an order of the appropriate court issued after reasonable notice to the prisoner and the United States and an opportunity for a hearing." 18 U.S.C. App. 2, § 9(2). Bozeman was not transferred pursuant to a court order, neither he nor his attorney was given notice, nor was a hearing on the transfer held before it occurred.

minimis interpretation in an attempt to shift the blame and the focus of what actually happened.[32]

The legislatures that have adopted the IAD were concerned about abuses by prosecutors, and they did not put in language that would excuse allegedly minor violations. The language of the IAD does not even make exceptions for inadvertent error. In Bozeman's case, what occurred was the direct result of deliberate action on the part of the prosecutor. The District Attorney never had any intention to abide by the terms of the IAD regarding a single transfer for trial.[33] Whether this was due to insurmountable ignorance or simple contumaciousness is unclear, but in neither case should the behavior be rewarded by considering it to be *de minimis*, especially since doing so would be in direct derogation of the language of the statute.[34] "Judges and prosecutors are players who can be

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[32] The *Amicus*' *de minimis* argument does not differ substantially from the Petitioner's harmless error argument. *See* Brief for the United States as Amicus Curiae Supporting Petitioner at 11 ("the similar and universally accepted principle of criminal procedure that harmless errors—errors that do not affect substantial rights—cannot be noticed"). *Cf.* Rule 37.1, Rules of the Supreme Court of the United States.

[33] The District Attorney always intended to shuttle Bozeman back to the federal penitentiary. Her letter of January 8, 1997 stated that "[a]n agent of the Covington County Sheriff's Department will pick Mr. Bozeman up on January 15, 1997 and return him to your facility on January 16, 1997. (App. 99.) The Prosecutor's Acceptance of Temporary Custody form also stated, "Inmate will be picked up from facility on January 15, 1997 and returned on January 16, 1997." (App. 104.) In fact, the pick-up and return occurred on January 23 and 24, 1997. (App. 86-87.)

[34] In *People v. Esposito*, 37 Misc. 386, 201 N.Y.S.2d 83 (1960), an inmate's request under Article III of the IAD had not been properly forwarded by the inmate's warden in the sending state. The district attorney contended that the omissions of the warden should not be held against the receiving State. The County Court for Queens County responded, "If that contention be correct the prisoner's effort to invoke the interstate procedure can be defeated by ineptitude—or worse—at least to

expected to know the IAD's straightforward requirements." *Reed v. Farley*, 512 U.S. 339, 370 (1994) (Blackmun, J., dissenting). The District Attorney had ample opportunity to investigate the IAD. A cursory reading of the statute would have warned her that she should not plan to transfer Bozeman back to federal custody before trial. *See* IAD, art. III(d), art. IV(e) & art. V(c). The State of Alabama had the obligation to inform the District Attorney of the provisions of the IAD. IAD, art. VII ("Each state party to this agreement shall designate an officer who . . . shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement."). The District Attorney was also statutorily charged with the duty of enforcing the IAD. IAD, art. IX(3) ("All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes."). Moreover, the IAD is referred to in the forms that the District Attorney had to fill out to obtain custody of Bozeman. Bozeman's newly appointed counsel put her on notice of the IAD at the arraignment. (App. 27 ("it appears that there may be some question about whether the Interstate Agreement on Detainers was properly followed . . . .").) Finally, the District Attorney had notice from Bozeman himself (through his *pro se* motion) that a violation of the IAD mandated dismissal.[35]

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the extent that final disposition of the outstanding charges can be postponed indefinitely, by official confusion compounded." *Esposito*, 37 Misc. at 391.

[35] The District Attorney acknowledged receipt of the *pro se* motion in her testimony at the hearing on the motion to dismiss.

> But in January of 1997, which would have been after his indictment in 97-16, and before he was brought back on the 23rd, we did receive, which apparently was after he was notified that we had

(App. 18-20.) As if that were not enough, the only two reported Alabama cases at the time that dealt with the anti-shuttling clause of the IAD had both supported a strict construction of the language of the statute. *See State v. Hill*, 638 So. 2d 1376 (Ala. Crim. App. 1993); *Gillard v. State*, 486 So. 2d 1323 (Ala. Crim. App. 1986). In sum, there was no excuse for violating the IAD, and such a deliberate violation is surely not *de minimis*.

A. A "*De minimis*" Interpretation Would Cloud The Bright Line Established By The Clear Language Of The Statute.

Under the analysis put forward by the *Amicus*, no statute could ever be more specific than a constitutional right. To give but one example, the violation of a speedy trial statute that had a clear and unambiguous deadline for a trial after which a charge must be dismissed would not be considered under the statutory time period but rather would be subjected to the analysis of *Barker v. Wingo*, 407 U.S. 514 (1972), to see if the Sixth Amendment had been violated.[36] Our system

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> placed a detainer on him, we received a paper from Mr. Bozeman asking that everything be dismissed. That we had violated the Interstate Agreement on Detainers, which appeared to be a request to [dispose] of everything.

(App. 69.)

[36] This Court noted that statutory requirements can be more specific than constitutional requirements.

> We do not establish procedural rules for the States, except when mandated by the Constitution. We find no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months. The States, of course, are free to prescribe a reasonable period consistent with constitutional standards, but our approach must be less precise.

Barker v. Wingo, 407 U.S. 514, 523 (1972). Of course, State constitutional requirements can also be more stringent than federal constitutional requirements; the federal Constitution merely provides a

simply does not work that way. Constitutional constraints provide a framework that statutes may not violate, but the legislatures (both Congress and the various State legislatures) are free to create statutory rights where the Constitution is silent, and they are free to create these rights with great specificity.

The clear language of the IAD sets a bright line for what is and what is not permissible, and the IAD is unambiguous in mandating the sanction to be imposed for violation of the bright line. A *de minimis* rule would obscure the clarity of the statute. Bozeman contests the characterization of what happened to him as being *de minimis*. Disputes involving lengthy hearings would be the inevitable result of any attempt to back off from the bright line. The real reason that the *Amicus* wishes to have a *de minimis* rule adopted is that it does not want those whom it regards as criminals to have their charges dismissed.[37] Nevertheless, such a concern does not justify ignoring the clear mandate of the law, especially when the sanction is imposed because the State violated the law. "The criminal goes free, if he must, but it is the law that set him free. Nothing can destroy a government more quickly than its failure to observe its own laws." *Mapp v. Ohio*, 367 U.S. 643, 659 (1961).

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floor below which the States may not fall. *See e.g.*, *State v. Harberts*, 331 Or. 72, 11 P.3d 641 (2000) (vacating death sentence and remanding with instructions to dismiss with prejudice on State constitutional grounds and noting that not all of the *Barker v. Wingo* factors apply to the State constitution's guarantee of a speedy trial).

[37] As pointed out earlier, this view ignores the presumption of innocence enjoyed by the accused.

B. Adopting A "*De minimis*" Rule Would Ignore The Fact That The Harm To The Prisoner Has Already Been Done When The Shuttling Occurs.

Dismissal is an appropriate remedy for violation of the anti-shuttling provisions of the IAD because the harm (at the very least, anxiety, uncertainty, and disruption) has already occurred. The court of the receiving State is not in a position to be able to repair that damage, not only because the damage is already done but also because the remedy is outside of the court's jurisdiction. The court cannot order the sending State to do something to "make up for" the violation. Rather, all that the court of the receiving State can do is recognize that harm has occurred and minimize it by dismissing the charges so that the prisoner can be returned to the sending State.[38] The Petitioner and the *Amici* seem to overlook the fact that "the damage is done by the filing of the detainer, and the problem is not solved until there is a final disposition." *People v. Christensen*, 102 Ill. 2d 321, 328, 465 N.E.2d 93 (1984). Final disposition can obviously—and appropriately, when there has been a violation—be achieved through dismissal of charges. Therefore, adopting a *de minimis* rule would ignore the damage that is inherent in a transfer in violation of the IAD.

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[38] It should not be overlooked that the dismissal required by Article IV(e) is but the logical conclusion of the earlier mandate that the indictment shall be void which precludes further prosecution.

> It is a well settled rule that a formal accusation is an essential condition precedent to a valid prosecution for a criminal offense. If Article IV(e) is violated and the indictment therefore loses its "force and effect," the condition precedent is unsatisfied and the prosecution is technically precluded from proceeding further. The sanction of dismissal with prejudice contained in Article IV(e), then, is a relatively severe sanction designed to compel prosecutorial compliance with the procedures set forth in the IAD.

Camp v. United States, 587 F.2d 397, 399 n.4 (8th Cir. 1978).

VII. The Petitioner And The *Amici* Simply Do Not Like The Result In The Present Case, But They Offer No Convincing Arguments That Should Cause This Court To Ignore The Unequivocal Language Of The Statute.

The Petitioner and the *Amici* object to the results of a literal interpretation of the IAD because it sometimes allows someone who has been charged to go free. They hope that the possibility of freeing a prisoner will be so shocking to the Court that it will adopt any of their arguments—it matters not which one as long as prosecutors do not have to worry about following the law. They urge judicial approval of a *de facto* amendment that would remove the mandatory sanctions of Article IV(e). *See Fex v. Michigan*, 507 U.S. 43, 52 (1993) ("Petitioner's 'fairness" and 'higher purpose' arguments are, in other words, more appropriately addressed by the legislatures of the contracting States, which adopted the IAD's text.").

The Petitioner and the *Amici* ignore the plain language of the statute, and they ignore the fact that it was entirely within the power of the District Attorney to have avoided the result mandated by the IAD *simply by following the rules*. The rules are set forth unambiguously in the IAD, and the clarity and specificity that are found in the statute can be relied upon by any court of law. "[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and time again that the courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-254 (1992). *See also Tennessee Valley Authority v. Hill*, 437 U.S. 153, 194-195 (1978) ("We do not sit as a committee of review, nor are we vested with the power of veto."); *Caminetti v. United States*, 242 U.S. 470, 485 (1917) ("if the law is within the constitutional authority of the lawmaking body which passed it, the sole function of the courts is to enforce it according to its terms").

The Supreme Court of Alabama correctly determined that the plain language of the IAD should be given the effect intended by the legislative bodies that passed it. The IAD can *only* be given effect by enforcing the plain language that was used in the statute. Michael Herman Bozeman and persons like him were the intended beneficiaries of the IAD, and so are we all. If a statute that is this clearly written can be ignored, what will be next?

CONCLUSION

The mandatory language of the Interstate Agreement on Detainers is set forth clearly and unambiguously, leaving no room for judicial discretion. The judgment of the Supreme Court of Alabama should be affirmed and all attempts to amend the statute should be addressed to the legislative branches of the respective member States.

Respectfully submitted,

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No. 00-492

In The

Supreme Court of the United States

STATE OF ALABAMA,

Petitioner,

v.

MICHAEL HERMAN BOZEMAN,

Respondent.

On Writ Of Certiorari
To The Supreme Court Of Alabama

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ARGUMENT

The sole issue presented is whether Article IV(e) of the Interstate Agreement on Detainers (IAD) mandated the dismissal of the indictments against Respondent Bozeman because of his one-day transfer between federal and state authorities for purposes of arraignment and the appointment of counsel, even though he suffered no harm whatsoever from that one-day transfer.[1] Relying on the well-established principle of law that errors that do not harm the rights of an individual should not result in reversal of convictions, the State of Alabama asserts that the harmless error rule applies to the IAD and that the Alabama Supreme Court erred in refusing to apply the harmless error rule to Bozeman's case and in holding that Bozeman's indictments should be dismissed. The Solicitor General, arguing a similar, but distinct, established principle of law, advocates that any violation of Article IV(e) of the IAD under the facts of this case was *de minimis* and does not require the indictments be dismissed. Bozeman argues, however, that these well-established principles of law should not apply because of what he describes as the plain and unambiguous language of Article IV(e);

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[1] The question whether the interpretation of the IAD is one of federal law or state law, or some hybrid of state and federal law, is not before this Court because it has previously been determined: The issue is one of federal law. *See New York v. Hill*, 120 S. Ct. 659, 662 (2000); *Cuyler v. Adams*, 449 U.S. 433, 438, 442 (1981). Because this issue is not one before this Court, no response is necessary to part I of Respondent Bozeman's brief. Moreover, because the issue of waiver was not raised in the courts below, the State of Alabama does not rely on the theory of waiver to support its argument, and a response to part V of Bozeman's brief is also pretermitted.

because of the intent of the parties to the IAD as expressed in the language of the Agreement; and, because reading into Article IV(e) either harmless error and/or *de minimis* principles would result in the provision having no effect. As will be demonstrated below, Bozeman's arguments do not withstand scrutiny because the language is neither as clear or unambiguous as Bozeman asserts; the provision can be given effect without displacing the background harmless error and *de minimis* principles against which the IAD was enacted and which the IAD is deemed to incorporate; and, to require dismissal would not be in accordance with the purposes of the IAD.

A. The Language Of Article IV(e) Is Not Clear And Unambiguous, And Is Subject To Interpretation.

Bozeman's primary argument is that, because the language of Article IV(e) of the IAD is clear and unambiguous, dismissal of his indictment was required. Setting aside for the moment the fact that nothing in Article IV(e) evinces an intent to displace the principles of harmless and *de minimis* error, see pp. 6-11, *infra*, the language of Article IV(e), and its application to the facts presented in this case, is neither as clear nor as unambiguous as Bozeman asserts.

Article IV of the IAD speaks only to transferring a prisoner for purposes of "trial" on outstanding charges. It says nothing about transferring a prisoner for purposes related to, but separate from, the actual trial, such as arraignment. Furthermore, Article IV(b) specifically indicates that request for temporary custody may be for

purposes other than for trial. Article IV(b) provides that, in requesting custody of a prisoner, one of the requirements is that the authority requesting temporary custody, give "the reasons therefore," indicating that the request for temporary custody could be for some reason besides trial. Moreover, Article IV(e) itself simply states that "[i]f trial is not had" on any indictment "as contemplated hereby", before the prisoner is returned to his place of imprisonment, then the indictment shall be dismissed with prejudice. However, it is uncertain what is "contemplated" by that provision of the Act.

Article IV(e) does not specifically answer the question of whether, if a prisoner is not brought to the receiving state for trial, but for some other purpose such as arraignment, the indictment must be dismissed. It could reasonably be determined that what is "contemplated" by Article IV(e) is that, if temporary custody of a prisoner is obtained for *trial* on outstanding charges, trial must be had on those charges before the prisoner is returned to the original place of imprisonment or the indictment must be dismissed, but if temporary custody of a prisoner is obtained for some other purpose, such as arraignment, then the provision does not apply at all. The point is that Article IV(e) is not so clear and unambiguous on its face and, therefore, cannot simply be interpreted by its terms to resolve the issue presented. There is certainly room for statutory construction of Article IV(e) and, when the provision is read in the context of the entire IAD, it does not require dismissal in the circumstances presented by this case.

When Article IV(e) is read in conjunction with the purpose of the IAD – to facilitate the disposition of outstanding detainers without interfering with rehabilitation efforts of the prisoner, *see, e.g., United States v. Mauro*, 436 U.S. 340, 351 (1978); Article I of the Interstate Agreement on Detainers – it is just as plausible, and probably more so, that the drafters of the IAD did *not* intend that a one-day transfer for arraignment purposes requires the harsh sanction of dismissal of the indictment with prejudice, as that they did intend such a result. The IAD is a remedial statute, *see Cuyler v. Adams*, 449 U.S. 433, 449-50 (1981), and, as such, it should be read to effectuate its purposes, *see Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967). A construction of Article IV(e), keeping in mind the purposes of the IAD; the admonishment in Article IX that the "agreement shall be liberally construed so as to effectuate its purposes"; and, the rule of statutory construction that a remedial statute, like the IAD, is to be read so as to effectuate its purposes, leads to a conclusion that Article IV(e) was not meant to apply to the brief one-day transfer that occurred in this case. The purpose of the statute, again, is to facilitate the disposition of outstanding detainers and to do so without interfering with rehabilitation efforts of the prisoner; it is not to give the prisoner a way to avoid facing legitimate charges brought against him by a party state.

In the paperwork supporting her request for a transfer in this case, the District Attorney specifically stated that she was requesting transfer of Bozeman to Covington County for arraignment (App. 98-100), and the trial judge ordered Bozeman transferred only for that purpose and the appointment of counsel. Similarly, in

those federal cases on which the State relies, the inmate was only transferred for a brief period of time for similar purposes, and those courts found the IAD had not been violated. *See, e.g., United States v. Daniels*, 3 F.3d 25, 27-28 (1st Cir. 1993) (two brief one-day transfers, once for initial appearance and appointment of counsel and once for arraignment, did not violate Article IV(e) of IAD); *United States v. Roy*, 771 F.2d 54, 56, 59-60 (2nd Cir. 1985) (one-day transfer for suppression hearing did not violate Article IV(e) of IAD); *United States v. Taylor*, 173 F.3d 538, 540, 541-42 (6th Cir.) (six brief, same-day transfers between federal and state custody for various purposes, including initial appearance and arraignment, did not violate IAD), *cert. denied*, 120 S. Ct. 448 (1999); *United States v. Johnson*, 953 F.2d 1167, 1170-71 (9th Cir.) (several one-day transfers for purposes of arraignment and pretrial hearings did not violate IAD), *cert. denied*, 506 U.S. 879 (1992). Those courts obviously construed Article IV(e) as requiring only that the indictment must be dismissed if an inmate is taken into temporary custody for the purpose of *trial* and trial is not had on the indictment before the prisoner is returned, but not requiring that an indictment be dismissed if temporary custody is for some other purpose, such as arraignment, as in this case, especially when there is no demonstrable harm to the prisoner. Those courts either construed Article IV(e) as simply not applying to brief transfers for purposes other than trial or they applied harmless error or *de minimis* principles, finding no harm from the brief transfers, and therefore, no dismissals were warranted.

Although the State of Alabama's argument continues to be that the mere "technical error" that the Alabama

Supreme Court found to exist was at most, harmless error, Bozeman's argument that the language of the statute is clear and unambiguous on its face compels the rebuttal that there was, at least arguably, no error at all in the one-day transfer for arraignment – that Article IV(e) was not, in fact, violated by this one-day transfer. Although application of the harmless error rule avoids that thicket, Bozeman's "plain language" argument fails.

B. This Court Has Indicated A Preference For Application Of The Harmless Error Rule And Bozeman Has Failed To Demonstrate Any Reason Why It Should Not Be Applied To Article IV(e) Of The IAD.

As outlined in the State's initial brief, this Court has indicated a preference for the application of the harmless error rule in most circumstances. Nothing in the IAD evinces an intent to displace application of that bedrock principle of criminal procedure, or the related principle of *de minimis non curat lex*, which "is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992). To the contrary, the IAD is at best silent regarding those principles. When confronted with IAD's similar silence regarding the background principle of waiver in *New York v. Hill*, 528 U.S. 110, 114 (2000), this Court concluded that the IAD does not displace, and in fact incorporates, the principle of waiver. *Id.* Confronted by the IAD's similar silence regarding harmless and *de minimis* error, the Court should likewise conclude that the

IAD does not displace, and in fact incorporates, those principles here. Bozeman argues, however, that this preferred rule should not be applied in this case because: harmless error only applies to rights that impact on court proceedings, usually at trial (Respondent's brief at 31-32); the IAD does not provide for harmless error and its provisions specifically contradict such an application (Respondent's brief at 33-34); Article IV(e) cannot be given effect if the harmless error rule is applied to it (Respondent's brief at 22-24, 33-34); and, application of harmless error would be unworkable in this situation (Respondent's brief at 35-38).

1. Bozeman's first argument, that the harmless error rule is reserved for trial errors, is contradicted by both the definition of harmless error and by case law from this Court. First, the harmless error rule itself does not limit it to application in the trial context. It refers to error that does not affect "a substantial right of the defendant," not merely to errors that affect the outcome of the trial. *See, e.g., Kotteakos v. United States*, 328 U.S. 750, 760, 765 (1946). Furthermore, while the harmless error rule has most often been applied in the trial context, this Court has previously applied harmless error in the non-trial context. *See, e.g., United States v. Montalvo-Murillo*, 495 U.S. 711 (1990); *Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988); *United States v. Mechanik*, 475 U.S. 66 (1986). Specifically, and most significantly, this Court held that the harmless error rule applied to the Bail Reform Act of 1984, which in no way implicated actual trial rights, just as the IAD does not implicate trial rights. *See United States v. Montalvo-Murillo*, 495 U.S. 711 (1990).

In *Montalvo-Murillo*, the petitioner urged that dismissal of the indictment was mandated under the Bail Reform Act of 1984 because the defendant had been denied the mandatory hearing in the time required by that statute. The Bail Reform Act of 1984 provides that, the judicial officer "*shall* hold a hearing to determine whether any condition or combination of conditions . . . will reasonably assure the appearance of such person as required and the safety of any other person and the community" and the "hearing *shall* be held immediately upon a person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance." *Montalvo-Murillo*, 495 U.S. at 714 (emphasis added). Montalvo-Murillo was not granted the detention hearing required by the statute at the time it was required and his indictment was ordered to be dismissed. *Id.* at 715-16. Despite the mandatory nature of the language of the statute, this Court held that the violation of the statute was harmless error, *id.* at 722, reasoning as follows:

> Our conclusion is consistent with the design and function of the statute. . . . Automatic release contravenes the object of the statute, to provide fair bail procedures while protecting the safety of the public and assuring the appearance at trial of defendants found likely to flee. The end of exacting compliance with the letter of § 3142(f) cannot justify the means of exposing the public to an increased likelihood of violent crime by persons on bail, an evil the statute aims to prevent . . . .
>
> . . .

> In these situations, there is no reason to bestow upon the defendant a windfall and to visit upon the Government and the citizens a severe penalty by mandating release of possibly dangerous defendants every time some deviation from the strictures of § 3142(f) occurs.

Id. at 719-20. Likewise, in this case, a conclusion that harmless error should apply under the facts of this case, despite the mandatory language in Article IV(e), is consistent with the purposes of the statute and with principles of common sense.

2. Bozeman's second argument is equally unpersuasive. Bozeman argues that harmless error was not meant to apply to Article IV(e) of the IAD because the sanction for non-compliance with the provision is included in the provision itself – dismissal of the indictment with prejudice – and neither in Article IV(e), nor anywhere else in the Act, is harmless error mentioned. The failure to mention harmless error in the IAD is not, however, determinative of whether this Court will find harmless error applicable. In *Brecht v. Abrahamson*, 507 U.S. 619, 631-33 (1993), this Court held that harmless error applied to federal habeas corpus proceedings despite Congress's failure to address the matter in the habeas corpus statute.

Moreover, this Court found that an equally-established principle of law – waiver – applied to a similar provision of the IAD that required dismissal of the indictment with prejudice, even though waiver was not mentioned in the provision, nor contained anywhere in the IAD, and even though the provision had the mandatory sanction of dismissal of the indictment with prejudice for non-compliance. *See New York v. Hill*, 120 S. Ct. 659 (2000).

There, as here, the IAD provision at issue provided both a specific procedural rule (there, a speedy trial right) and a facially unconditional sanction for its violation (there, as here, dismissal). *See* Art. V(c); *Hill*, 528 U.S. at 112 ("If a defendant is not brought to trial within the applicable statutory period, the IAD requires that the indictment be dismissed with prejudice."). Recognizing that there is a presumption that waiver does apply, this Court found it did apply to violations of the IAD. *Id.* Similarly, this Court has recognized that there is a presumption that harmless error applies, and nothing in the IAD's text or structure precludes its application here. *Hill* is indistinguishable from this case on the plain language of the statute argument.

3. Third, Bozeman argues that Article IV(e) cannot be given any meaning or effect if the harmless error rule is applied to it. Contrary to his argument, however, the statute can be reasonably read, in its plain language, to mean that, if temporary custody of an inmate is transferred from the sending state to the receiving state *for trial*, and trial is not had on the outstanding charges, then the indictment must be dismissed with prejudice. If an inmate is briefly transferred from the sending state to the receiving state for some other purpose than trial, such as arraignment, appointment of counsel, a youthful offender hearing, or for an interview, and the inmate does not suffer any harm as contemplated by the IAD, then the indictment on any outstanding charges does not have to be dismissed with prejudice. Interpreting the statute in this way gives the particular section meaning and construes the section in such a way as to comply with the

purposes behind the IAD, without bestowing a windfall on the inmate from administrative errors.

4. Finally, Bozeman argues that the bright-line established in Article IV(e) is necessary for Article IV of the IAD to be workable and that the balancing test urged by the State would be unworkable. But the State is not requesting that a balancing test be performed by a trial judge, merely that a determination be made that a violation of Article IV(e) of the IAD harmed the prisoner before an outstanding charge, like the serious felony charge at issue here, be dismissed. This type of harmless error analysis is performed in a myriad of contexts; its performance in this context would be no more difficult or burdensome.

C. Application Of The Harmless Error Rule In This Case Would Require A Reversal Of The Alabama Supreme Court's Determination That Dismissal Of The Indictment Was Mandated.

Bozeman also argues that harmless error would not mandate a reversal in his case, even if such principles applied to the IAD.

First, Bozeman argues that he was harmed because he was prevented from consulting with counsel. See Respondent's brief at pages 8, 30. This argument was not made before the trial court and it is not, therefore, properly considered at this time. *Tacon v. Arizona*, 410 U.S. 351, 352 (1973) ("We cannot decide issues raised for the first time here."). Moreover, an assertion by Bozeman that he was prevented from consulting with counsel, without more, does not demonstrate that he was harmed.

Second, Bozeman argues that the trial court's findings concerning the harm or lack thereof were not supported by the evidence before it. Bozeman, however, has never objected previously to any of the findings of the trial judge and he cannot, at this late date, obtain review of those findings. Moreover, even if those findings were reviewable, this Court's review of those findings should be highly deferential. *Hernandez v. New York*, 500 U.S. 352, 364-66 (1991). Applying such a deferential standard dictates a result in compliance with the trial court's finding: Bozeman was not harmed by the one-day transfer in this case.

Third, and in any event, this Court need not itself resolve whether the particular procedural mistake that occurred in this case prejudiced Bozeman's substantial rights. The question before this Court is a purely legal one – whether Article IV(e) of the IAD wholly precludes application of harmless error and *de minimis non curat lex* principles. The Supreme Court of Alabama held that Article IV(e) of the IAD has that effect; it therefore declined to examine the issue of prejudice. Because that was error, the judgment of the Alabama Supreme Court should be reversed.

Fourth, Bozeman alleges that, even if harmless error did apply to Article IV(e) of the IAD, he would still prevail because what more harm could he suffer than to have his indictment not be dismissed, as opposed to having it dismissed and not having to face charges. The harm that must be addressed, however, is the harm caused by the error, the violation of Article IV(e), not the harm caused if the harmless error rule applies. The focus must be on whether Bozeman was harmed by the one-day

transfer, not whether he will be harmed by the failure to dismiss the indictment. To follow Bozeman's logic would eviscerate the rule altogether. For example, if, on appeal, an appellate court finds that error occurred in the trial, ordinarily, reversal would be required if the issue was preserved. An appellate court will not reverse the case, however, if it finds that the error did not harm the defendant, if it did not affect a substantial right. To follow Bozeman's reasoning, any time an appellate court found the error harmless and did not reverse the case, the defendant will have been harmed in such a way that harmless error should not apply. The difference is between having the case reversed and not having the case reversed, just like the difference is between having the indictment dismissed and not having the indictment dismissed. Bozeman's focus on the outcome is not a proper application of the harmless error rule and should not be adopted.

Finally, Bozeman argues that the State is attempting to shift to him the burden of proving that he was not harmed by the one-day transfer. Such an assertion is not true. The trial court found that there was no harm to Bozeman from the one-day transfer and Bozeman never objected to those findings. He cannot now claim that they were improper. The State merely relies on those factfindings to demonstrate that there was no harm to Bozeman from the one-day transfer.

Application of the harmless error rule is not precluded by any of the terms of Article IV(e) nor any other provision of the IAD, and its application would best serve the purposes of the IAD under the facts of this case. Bozeman was not harmed by his one-day transfer of

custody between federal and state officials, and the windfall of avoiding prosecution should not be granted to him. This Court should reverse the decision of the Alabama Supreme Court.

Respectfully submitted,

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In the Supreme Court of the United States

STATE OF ALABAMA, PETITIONER

v.

MICHAEL HERMAN BOZEMAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a one-day transfer of a federal prisoner to state custody for purposes of arraignment, without completing the trial on the state charges, violates Article IV(e) of the Interstate Agreement on Detainers and requires dismissal of the state charges.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case involves the construction of the Interstate Agreement on Detainers (IAD), a congressionally authorized interstate compact to which the United States is a party. The question presented is whether Article IV(e) of the IAD requires the dismissal of the state charges against respondent with prejudice because he was transferred from federal custody to state custody for arraignment and returned to federal custody one day later without completing his state trial. As a party to the compact, the United States has an interest in its correct interpretation and application. In addition, the United States has an interest in being able to accommodate a State's request for temporary cus-

tody of a federal prisoner in connection with a state prosecution that may not be completed before the prisoner is returned. Finally, issues similar to the present one have arisen in federal prosecutions, although Congress has enacted special laws to address the case in which the federal government obtains custody of a state prisoner from the State in connection with a federal prosecution and returns the prisoner to state custody before trial has been completed, see 18 U.S.C. App. 2, § 9.

STATEMENT

1. The Compact Clause of the United States Constitution, Art. I, § 10, Cl. 3, provides that States may enter into agreements and compacts with one another, but only with "the Consent of Congress." Pursuant to that authority, Congress in 1934 authorized the States to enter into agreements, including the Interstate Agreement on Detainers (IAD), to regulate the apprehension and prosecution of criminals. See Crime Control Consent Act of 1934, ch. 406, 48 Stat. 909 (4 U.S.C. 112(a)); *Cuyler* v. *Adams*, 449 U.S. 433, 441-442 & n.9 (1981). Since the IAD's promulgation, 48 States have entered into it. *Carchman* v. *Nash*, 473 U.S. 716, 719 (1985). For example, the IAD is codified as part of Alabama Law as Ala. Code §§ 15-9-80 *et seq.* (1995). The United States became a party to the IAD in 1970, see Interstate Agreement on Detainers Act, Pub. L. No. 91-538, 84 Stat. 1397, as amended, Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7059, 102 Stat. 4403, and the IAD is codified as a matter of federal law in 18 U.S.C. App. 2.[1]

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[1] Before the United States became a party to the IAD, the government employed the writ of habeas corpus ad prosequendum to obtain custody of state prisoners in order to proceed with

Detainers are ordinarily employed when one State seeks to bring charges against a prisoner in another State's custody. *New York* v. *Hill*, 528 U.S. 110, 111-112 (2000).[2] As this Court has explained, a "detainer is a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent." *Carchman*, 473 U.S. at 719. Articles IV and V of the IAD provide the mechanisms through which one jurisdiction may, for purposes of criminal prosecution, obtain temporary custody of a prisoner incarcerated by another jurisdiction. Under Article IV, a State that has lodged a detainer against a prisoner may, by written notice, request temporary custody or availability of the prisoner. IAD, Art. IV(a). Once that State has received custody of the prisoner, it must try him within 120 days, subject to reasonable continuances for good cause shown in open court. IAD, Art. IV(c). Article V(e) provides that, "[a]t the earliest practicable time consonant with the purposes of" the IAD, "the prisoner shall be returned to the sending State."

Article IV(e), known as the anti-shuttling provision, provides that, "[i]f trial is not had on any indictment, information, or complaint contemplated hereby prior to

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federal prosecutions. This Court has held that, notwithstanding Congress's adoption of the IAD, the federal government may continue to employ that writ to obtain custody of state prisoners. See *United States* v. *Mauro*, 436 U.S. 340, 360-361 (1978).

[2] The IAD defines the term "State" as including not only the various States and Commonwealths that compose the Union, but also the United States of America, the District of Columbia, Puerto Rico, and any territory or possession of the United States. IAD, Art. II(a). Throughout this brief, we use the term "State" in the same sense.

the prisoner's being returned to the original place of imprisonment pursuant to article V(e)" of the IAD, "such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice." The anti-shuttling provision is meant "to protect the prisoner against endless interruption of the rehabilitation programs because of criminal proceedings in other jurisdictions." *United States* v. *Roy*, 830 F.2d 628, 636 (7th Cir. 1987), cert. denied, 484 U.S. 1068 (1988).

2. In June of 1995, respondent Michael Herman Bozeman was arrested in Covington County, Alabama, on federal charges, including conspiracy to possess methamphetamine with intent to distribute it in violation of 21 U.S.C. 846. On November 3, 1995, respondent appeared before the United States District Court for the District of Georgia, and pleaded guilty to those charges. He was sentenced to 75 months of imprisonment, to be followed by four years of supervised release; the term of imprisonment was later reduced to 36 months, but the term of supervised release was left unchanged.

In September of 1996, a Covington County, Alabama, grand jury indicted respondent on various shooting charges, including two counts of discharging a firearm into an occupied dwelling, two counts of discharging a firearm into an unoccupied vehicle, and one count of discharging a firearm into an unoccupied dwelling. Respondent had committed those offenses in June of 1995, before he was arrested on federal charges. The Covington County District Attorney sent a request to the Federal Bureau of Prisons in Atlanta, asking that a detainer be placed against respondent under the IAD. Bureau of Prisons officials responded by stating that the detainer had been filed pursuant to the District

Attorney's request. Respondent apparently received and signed, on November 4, 1996, a notice that advised him of the detainer, notified him of the untried indictments, and informed him that he had the right under Article III of the IAD to request prompt disposition of the charges against him. Respondent was later transferred from the Federal Penitentiary in Atlanta to a federal facility in Marianna, Florida. Pet. 5. Marianna is in northwestern Florida, near the Alabama border, approximately 80 miles (as the crow flies) from the county seat of Covington County, which is the city of Andalusia.[3]

On January 8, 1997, the District Attorney requested temporary custody of respondent from Bureau of Prisons officials in Marianna, Florida, indicating that respondent was needed for arraignment and appointment of counsel on the shooting charges. The written request stated that respondent would be picked up on January 15, 1997, and returned the next day, on January 16, 1997. It was not until January 23, 1997, however, that respondent was made available to and placed in the temporary custody of Covington County authorities, who transported him to Covington County. The next day, January 24, 1997, respondent received appointed counsel, was arraigned on the shooting charges, and transferred back to federal custody in Marianna, Florida. Pet. App. 17-18, 28; Pet. 5-6.

On the day of arraignment, respondent's pro se motion to dismiss the indictment, which claimed that there had been a violation of the IAD, was filed. (Respondent apparently had earlier been transferred

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[3] The driving distance between Marianna, Florida, and Andalusia, Alabama, is approximately 110 miles. We are advised that the estimated travel time is two hours and ten minutes.

for arraignment on separate drug charges, which were later dismissed, and returned to federal authorities before being indicted on the shooting charges. See note 4, *infra*.) Appointed counsel stated that there were possible questions on that issue, and asked to reserve the issue for post-arraignment consideration; the trial court granted the motion. Apparently, respondent did not object to being returned to federal custody following the arraignment, and he was so returned. Pet. 6.

On February 21, 1997, respondent's counsel filed a motion to dismiss the untried charges. Article IV(e) of the IAD, he argued, compelled dismissal because respondent had been brought to Covington County under the IAD, but had been returned to his original place of incarceration without having been tried. Shortly thereafter, on February 27, 1997, respondent was transferred back into the custody of Covington County officials to stand trial on the shooting charges. He was tried that day, and the jury unanimously found him guilty of all charges the next day, February 28, 1997. Pet. 7.

Following his conviction, respondent renewed the motion to dismiss. After a hearing, the trial court denied the motion. The only issue before it, the trial court stated, was whether Article IV of the IAD had been violated. Pet. App. 27. The trial court found that, because respondent had been "brought to Covington County * * * to attend to short pre-trial matters, not anticipated to require his extended presence," it "made much sense to bring him into the county briefly to see to those matters, and thereupon return him to the surroundings to which he was accustomed." *Id.* at 28. "That course," the court explained, "appears to have been conservative of *defendant's* interest in maintaining any course of rehabilitation available to him in

federal prison. He certainly would not receive much rehabilitation in a county jail." *Ibid.* "[M]any prison inmates," the court continued, "don't care to stay in our county jail for two or three months pending trial." *Ibid.*

The court therefore found that "there was a failure of proof that" respondent's transfer had "interfered with [his] participation in any rehabilitative program, or that he was denied, threatened with the denial of, or feared losing any privileges because of this state charge." Pet. App. 28.[4] Instead, the court found that the transfer was "wholly consistent with the goal of the IAD to expedite the prosecution of state charges without interfering with any rehabilitative programs." *Id.* at 29. The court therefore held that there had been no violation of the IAD, and it declined to dismiss the charges.

3. The Alabama Court of Criminal Appeals affirmed. Pet. App. 15-26. The court began by noting that the federal courts of appeals were divided on whether a one-day transfer between a sending and a receiving jurisdiction, without resolution of the pending charges, violates Article IV(e) of the IAD. *Id.* at 21. The posi-

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[4] The trial court's opinion speaks of "transfers" in the plural because, before being transferred to Covington County on the shooting charges, respondent was once transferred to Covington County in connection with state drug charges that were later dismissed. See Pet. 4 n.2. The Court of Criminal Appeals concluded that, because the shooting charges were not pending at the time respondent was transferred to Covington County and then returned to federal custody in connection with the drug charges, the IAD could not be read as requiring dismissal of the shooting charges based on that earlier transfer. The IAD, the court explained, only applies to "untried indictments," and there was no untried indictment charging the shooting offenses when respondent was transferred and returned in connection with the drug charges. See Pet. App. 16-17. Respondent has not sought further review of that holding.

tion of the courts finding no violation, the Court of Criminal Appeals concluded, was more persuasive in light of paragraph 1 of Article IX of the IAD, which states that the agreement "shall be liberally construed so as to effectuate its purposes." *Ibid.* In this case, the court noted, the transfers did not interfere with the purpose of the IAD. *Ibid.* To the contrary, the court of appeals observed that respondent had failed (until appeal) to claim that he had suffered any prejudice from the transfer. *Id.* at 21-22.[5] Keeping a prisoner "for trial, rather than returning him immediately after arraignment," the court explained, often would "interfere[] with [the prisoner's] legitimate interest in participating in the program of rehabilitation in which he was enrolled;" in contrast, brief removal and "prompt return * * * after arraignment" did not have that effect. *Id.* at 23 (quoting *Sassoon* v. *Stynchombe*, 654 F.2d 371, 375 (5th Cir. 1981), and *State* v. *Sassoon*, 242 S.E.2d 121, 123 (Ga. 1978)). Based on that reasoning and the record before it, the court held that respondent's "brief transfer in January 1997 for arraignment * * * and return to federal custody the following day did not violate Article IV(e) of" the IAD. *Id.* at 26.

4. The state supreme court reversed, with three justices dissenting. Pet. App. 1-14. The majority

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[5] On appeal, respondent apparently "made a conclusory assertion that his transfers interfered with his ability to aid in his defense." Pet. App. 22 n.2. The Court of Criminal Appeals noted that the argument had not been timely raised before appeal, *id.* at 21-22, and declined to address it, *id.* at 22 n.2. See also *id.* at 12 (dissenting opinion) (Respondent "does not argue on appeal that he was prejudiced by the transfer back to federal custody before his trial."); *id.* at 12 n.9 (noting that "the record does not contain "evidence to support" the assertion of prejudice). See also *id.* at 7-10 (state supreme court decision reversing without finding prejudice).

reasoned that, under the text of the IAD, there is no exception for technical violations of Article IV(e). Instead, the majority stated, the IAD unambiguously requires that, whenever the prisoner is returned to the sending jurisdiction before trial, any untried charges in the receiving jurisdiction must be dismissed. *Id.* at 8.

The court did not dispute that, in individual cases, a one day trip might cause no more than "minimal interruption of the rehabilitative process." Pet. App. 7 (quoting *United States* v. *Sorrell*, 413 F. Supp. 138 (E.D. Pa. 1976), aff'd, 562 F.2d 227 (3d Cir. 1977), cert. denied, 436 U.S. 949 (1978)). The court concluded, however, that the IAD was not drafted to deal with "an individual situation, but rather [to be] an agreement of national scope." *Ibid.* Given the tremendous distances between and within States, the court continued, transfers could require trips measuring hundreds of miles and create more than minimal disruption. *Id.* at 8. The legislature could have, the court continued, "stepped beyond the confines of the text of the compact and included limitations in the statute expressly allowing 'technical' violations to occur. However, it * * * did not do so. This Court will not interject its interpretation of what the Legislature should have done." *Ibid.*

Three justices dissented, and a fourth recused herself because she had been a member of the Court of Criminal Appeals when that court considered the case. Pet. App. 10-14. The dissenting justices stated that a technical violation of the IAD does not require the dismissal of charges with prejudice. A majority of federal courts of appeals, they pointed out, had concluded that a one-day transfer like the one at issue here was not a material violation of the Act. Indeed, they noted, transferring the prisoner back to the sending institution promptly will often be more consonant with

the Act's purposes, because it enables the prisoner to participate in rehabilitation programs that he would otherwise miss. *Id.* at 12.

SUMMARY OF ARGUMENT

The Supreme Court of Alabama erroneously held that even a technical and wholly harmless defect in a temporary transfer under the Interstate Agreement on Detainers requires dismissal of an indictment with prejudice.

A. The IAD seeks to minimize the negative impact that detainers can have on a prisoner's participation in rehabilitation programs in the jurisdiction in which he is incarcerated. Article IV(e), the anti-shuttling rule, serves that goal by protecting "the prisoner against endless interruption of the rehabilitation programs because of criminal proceedings in other jurisdictions." *United States* v. *Roy*, 830 F.2d 628, 636 (7th Cir. 1987), cert. denied, 484 U.S. 1068 (1988). Consistent with that purpose, the overwhelming majority of federal courts of appeals have reached the common sense conclusion that Article IV(e) of the IAD is not materially violated when a prisoner's confinement is briefly interrupted by transfer to another jurisdiction for purposes of arraignment if the prisoner is returned to the original place of confinement within a day and his participation in rehabilitation programs is unaffected. Those courts have observed that a contrary, inflexible construction of the statute would undermine the IAD's express goals. The rapid return of a prisoner to the original place of confinement minimizes any interruption of the prisoner's participation in rehabilitative programs. In contrast, requiring the prisoner to remain in what may be lengthy custody in the receiving State would prevent the prisoner from participating in rehabili-

tation programs at his original place of confinement, forcing him instead to spend an extended period in a local pre-trial detention facility where, as here, such programs are often unavailable.

B. The Supreme Court of Alabama held that the plain language of the IAD compelled it to require dismissal because of the one-day transfer of custody in this case. In particular, that court reasoned that, because the IAD does not contain an express exception for "technical" or "*de minimis*" breaches, excusing such errors would be tantamount to judicial legislation. Pet. App. 8. That conclusion, however, is inconsistent with the principle of *de minimis non curat lex*—"the law cares not for trifles"—which, this Court has held, "is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." *Wisconsin Dep't of Revenue* v. *William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992). In fact, the reasoning adopted by the Alabama Supreme Court in this case is virtually indistinguishable from the line of argument this Court rejected in *Wrigley*. It is also inconsistent with the similar and universally accepted principle of criminal procedure that harmless errors—errors that do not affect substantial rights—cannot be noticed. Nothing in the IAD indicates that it was meant to abrogate the well-settled *de minimis* principle or the doctrine of harmless error. To the contrary, applications of those principles in this context would be wholly consistent with the statutory purpose of minimizing, rather than exacerbating, the potentially disruptive effect that pending charges in another jurisdiction can have.

ARGUMENT

ARTICLE IV(e) OF THE INTERSTATE AGREEMENT ON DETAINERS IS NOT VIOLATED BY A BRIEF INTERRUPTION OF CONFINEMENT THAT DOES NOT AFFECT SUBSTANTIAL RIGHTS

In *Wisconsin Department of Revenue* v. *William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992), this Court held that "the venerable maxim *de minimis non curat lex* ('the law cares not for trifles') is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." In criminal procedure, the similar view that non-prejudicial errors shall be disregarded finds expression in the related and universally accepted principle of harmless error, under which a conviction may not be set aside unless the error complained of affected the defendant's substantial rights. In this case, the Supreme Court of Alabama erroneously declined to construe Article IV(e) of the Interstate Agreement on Detainers in light of those background principles of law. To the contrary, that court held that, even if the alleged violation of the IAD is wholly trivial, causes no injury to the substantial rights of the prisoner, and actually benefits the interests of the prisoner that the IAD was meant to protect, the "plain language" of Article IV(e) requires that the harsh remedy of dismissal with prejudice be imposed and the criminal defendant must be permitted to escape prosecution for his crimes. Because that result is not compelled by the statutory language, is inconsistent with the background principles that all federal enactments are deemed to accept, and defeats the purposes Article IV(e) of the IAD is

designed to serve, this Court should reverse the judgment below.

A. The Vast Majority Of Federal Courts Have Correctly Concluded That *De Minimis* Transfers Do Not Offend The IAD

The IAD seeks to minimize the negative impact that the lodging of a detainer can have on a prisoner's participation in rehabilitation programs in the jurisdiction in which he is incarcerated. In proposing the legislation that became the IAD, the Council of State Governments observed that an inmate who has a detainer against him often confronts great uncertainty about his future and, as a result, "frequently does not respond to" rehabilitation efforts. Council of State Governments, *Suggested State Legislation, Program for 1957*, at 74 (1956). In addition:

> [A prisoner subject to a detainer] often must be kept in close custody, which bars him from treatment such as trustyships, moderations of custody and opportunity for transfer to farms and work camps. * * * Instead, he often becomes embittered with continued institutionalization and the objective of the correctional system is defeated.

Ibid. See also *Carchman* v. *Nash*, 473 U.S. 716, 719-720 (1985).

The IAD was drafted to minimize such interference with rehabilitation programs and "to encourage the expeditious and orderly disposition of [outstanding] charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints." IAD, Art. I. To that end, Articles IV and V of the IAD provide (among other things) procedures for the temporary transfer of

custody of a prisoner from the jurisdiction where he is incarcerated to the jurisdiction filing the detainer for prompt resolution of the charges on which the detainer is based. To minimize the time the prisoner must spend away from his original place of incarceration, Article IV(c) requires States that request temporary custody of a prisoner for purposes of trial to begin the trial within 120 days of obtaining custody. And Article V(e) of the IAD requires that, "[a]t the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State." See also *New York* v. *Hill*, 528 U.S. 110, 118 n.3 (2000).[6]

To ensure that repeated transfers between jurisdictions do not interfere with the prisoner's participation in rehabilitation programs in the jurisdiction in which he is incarcerated, the IAD contains the provision at issue in this case, Article IV(e), which is known as the "anti-shuttling" provision. Article IV(e) states:

> If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of

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[6] In addition, under Article III(a) of the IAD, the *prisoner* can demand prompt resolution of the charges underlying any detainer lodged against him. Upon such a request, the prisoner must be brought to trial within 180 days, subject to reasonable continuances for good cause shown in open court in the presence of the prisoner or his counsel. IAD, Art. III(a). Failure to try the prisoner within the applicable statutory period requires dismissal of the indictment, with prejudice. IAD, Art. V(c). See generally *Hill*, 528 U.S. at 112. But see 18 U.S.C. App. 2, § 9(1) (providing that, where federal charges are at issue, dismissal can be with or without prejudice).

> any further force or effect, and the court shall enter an order dismissing the same with prejudice.

IAD, Art. IV(e). Article IV(e) is "meant to protect the prisoner against endless interruption of the rehabilitation programs because of criminal proceedings in other jurisdictions," *United States* v. *Roy*, 830 F.2d 628, 636 (7th Cir. 1987), cert. denied, 484 U.S. 1068 (1988), and "prevent[s] prisoners from being abused by the lodging of detainers and transfer to a requesting state unaccompanied by an intent or ability to try the individual," 134 Cong. Rec. 32,703 (1988). See also *United States* v. *Taylor*, 861 F.2d 316, 319 (1st Cir. 1988) ("[T]he requirement * * * primarily was designed to avoid the shuttling of prisoners back and forth between institutions in different states or in distant parts of the same state.").

Consistent with that purpose, the overwhelming majority of federal courts of appeals—including the First, Second, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits—have concluded that Article IV(e) of the IAD is not materially violated by a brief interruption in confinement for purposes of arraignment when the prisoner is returned to the original place of confinement within a day and his participation in rehabilitation programs is unaffected. Absent a material violation, those courts hold, the sanction of dismissal with prejudice is improper. See *United States* v. *Daniels*, 3 F.3d 25, 27 (1st Cir. 1993) ("[A] brief interruption in state prison confinement for purposes of arraignment, where the prisoner is returned to state custody the same day, does not violate the IAD."); *United States* v. *Roy*, 771 F.2d 54, 60 (2d Cir. 1985) (no violation necessitating dismissal where prisoner was out of state custody overnight), cert. denied, 475 U.S. 1110 (1986); *Sassoon* v.

Stynchombe, 654 F.2d 371, 375 (5th Cir. 1981) (no violation when prisoner's return to federal penitentiary, after five day absence for arraignment, "allowed him to participate in the extensive rehabilitative education program available there"); *United States* v. *Taylor*, 173 F.3d 538, 542 (6th Cir.) ("[W]e agree with the 'common sense' approach applied by a majority of the circuits."), cert. denied, 528 U.S. 987 (1999); *Roy*, 830 F.2d at 636 (no violation when prisoner's "overnight stay" in federal custody was not a "real interruption of [his] state incarceration and * * * he was not deprived of any privilege at the state institution as a result"); *Baxter* v. *United States*, 966 F.2d 387, 389 (8th Cir. 1992) ("[A]rticle IV(e) of the IADA does not apply when a prisoner is removed from a state prison for a few hours to be arraigned, plead, and be sentenced in federal court without ever being held at any other place of imprisonment and without interrupting the prisoner's rehabilitation in the state prison."); *United States* v. *Johnson*, 953 F.2d 1167, 1171 (9th Cir.) (concluding that one-day transfers did not violate the IAD absent some injury to the prisoner's opportunity to participate in prison programs), cert. denied, 506 U.S. 879 (1992). See also *United States* v. *Taylor*, 947 F.2d 1002, 1004 (1st Cir. 1991) ("[W]e rely on * * * the single day interruption of the state confinement, and the manifest lack of injury."), cert. denied, 504 U.S. 991 (1992).

A contrary, inflexible construction of the statute would be at war with the IAD's express goals. The rapid return of a prisoner to the original place of confinement following a single-day absence for arraignment, those courts have noted, minimizes any interruption of the prisoner's participation in rehabilitative programs. *Roy*, 830 F.2d at 636 ("one-day interruption"

of confinement "quite obviously 'pose[s] no threat to a prisoner's rehabilitation sufficient to constitute a violation of the Agreement'"); *Daniels*, 3 F.3d at 27 ("brief interruption in state custody poses no threat to the prisoner's rehabilitation efforts"). In contrast, requiring the prisoner to remain in the custody of the charging State—precluding his return to the original place of confinement upon threat of dismissal—during the sometimes lengthy period between arraignment and trial would force the prisoner to remain in a local pre-trial detention facility, where rehabilitation services are often unavailable, for an extended period of time. As one court of appeals has explained:

> [If] a prisoner could not be returned safely to his original place of imprisonment * * * , the [receiving jurisdiction] would be forced to keep the prisoner in its custody throughout the period necessary for final resolution of the * * * charges; to do otherwise would risk dismissal of the indictment for technical noncompliance with the Agreement. This practice would frequently result in incarceration for several weeks or months in local jails, often in disadvantageous 'holdover' status, thereby unnecessarily interrupting the rehabilitation of the prisoner and bringing about the very evil that the Agreement was enacted to prevent.

Roy, 771 F.2d at 60. Accord *Taylor*, 861 F.2d at 319 ("[R]equiring the [receiving State] to retain custody of appellant until his trial would conflict with the Agreement's goal that a prisoner be able to pursue his original rehabilitation program with as little interruption as possible."); *Sassoon*, 654 F.2d at 375 (retaining prisoner "for trial, rather than returning him immediately after arraignment" would have "interfered

with [the prisoner's] legitimate interest in participating in the program of rehabilitation in which he was enrolled"); *Daniels*, 3 F.3d at 28 ("such interruptions may be advantageous to a defendant").

Congress, in fact, reached precisely the same conclusion, and it amended the federal statutes implementing the IAD to clarify Article IV(e) as a result. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7059, 102 Stat. 4403. In particular, responding to the decisions of the two courts of appeals that had parted company from the rest on this issue, Congress in 1988 amended 18 U.S.C. App. 2 by adding a new Section 9. Section 9(1) provides that dismissals of federal charges for violations of the Act can be made with or without prejudice, depending on the circumstances. 18 U.S.C. App. 2, § 9(1). And Section 9(2) essentially codifies the position taken by the majority of federal courts of appeals, declaring that "it *shall not be a violation* of the agreement on detainers if prior to trial the prisoner is returned to the custody of the sending State pursuant to an order of the appropriate court issued after reasonable notice to the prisoner and the United States and an opportunity for a hearing." 18 U.S.C. App. 2, § 9(2) (emphasis added).[7]

The legislative history of that amendment notes that, when a prisoner is transferred between federal and state authorities for a brief period, the "sanction" of dismissal for returning the prisoner before trial "makes

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[7] Congress, of course, did not attempt to unilaterally amend the IAD itself, or the various state laws adopting and implementing it. As a result, 18 U.S.C. App. 2, § 9, operates only with respect to the disposition of federal charges where a violation of the IAD is alleged; it does not by its terms directly control the disposition of state charges.

little sense," because such a transfer often will be within "the same state, perhaps across the street, for trial." 134 Cong. Rec. 32,703 (1988). If the two locations are sufficiently close and the interruption of confinement brief, Congress observed, permitting the prisoner to return to the original institution of confinement following arraignment "is clearly not harmful to the prisoner and ought not to lead to the drastic remedy of dismissal." *Ibid.* To the contrary, permitting the prisoner to continue his residence in the original place of confinement following arraignment "frequently is for the prisoner's benefit" because it "may enable him or her to resume participation in * * * rehabilitative programs whereas, if retained in [the receiving jurisdiction's] custody, the prisoner might have to be lodged in a * * * jail-type institution for a protracted time without comparable treatment or facilities." *Ibid.*

The same considerations exist in this case as well. Respondent, who was serving a multi-year sentence in a federal penitentiary in Marianna, Florida, was briefly placed in the custody of Covington County officials, transported a relatively short distance (a drive of approximately two hours) to Covington County, Alabama, for purposes of arraignment, and then sent back to his original place of confinement, all within a 24-hour period. Respondent has not shown that the brief, one-day interruption in federal custody interfered with his participation in rehabilitative programs. And the procedure may well have accrued to his benefit. Rather than having to spend a month awaiting trial in a local Covington County jail, respondent returned to the federal facility with which he was familiar. As the trial court observed, the transfer was "conservative of *defendant's* interest in maintaining any course of rehabilitation available to him in federal prison," since

he "certainly would not receive much rehabilitation in a county jail." Pet. App. 28. Indeed, respondent nowhere claims that he would have preferred to stay in the Covington County jail. The trial court, which was most familiar with local conditions, noted that such a preference would be somewhat unusual. "[M]any prison inmates," the court explained, "don't care to stay in our county jail for two or three months pending trial." *Ibid.*

B. The Decision Below Is Inconsistent With Fundamental Principles Of Statutory Construction

The Supreme Court of the State of Alabama did not disagree with the above considerations. It concluded, however, that the result reached by the overwhelming majority of federal courts of appeals could not be reconciled with the IAD's language. Under the IAD, the court stated, any untried charges must be dismissed with prejudice "[i]f trial is not had" on them "prior to the prisoner's being returned to the original place of imprisonment." Pet. App. 4, 8. We disagree with that analysis of the IAD.

The Supreme Court of Alabama's supposedly "plain text" construction of the IAD overlooks the background legal principle, which should be found applicable to a compact such as the IAD, that in the absence of a *material* breach of the relevant proscription, no remedy may be imposed—*de minimis non curat lex*. Indeed, one can often fairly say that, absent a material breach and resulting injury, there has been no breach at all.[8]

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[8] See, *e.g.*, *General Carbon Co.* v. *OSHA*, 860 F.2d 479, 487 (D.C. Cir. 1988) (where violation is "*de minimis*," it "means not only that no penalty is imposed * * * but also that the violation need not be abated"). Thus, in the law of torts, the absence of a material injury to the plaintiff defeats any cause of action for negligence. W. Page Keeton, *Prosser and Keeton on Torts* § 30, at

As the Court explained in *Wrigley*, 505 U.S. at 231, "the venerable maxim *de minimis non curat lex* ('the law cares not for trifles') is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept."

The Alabama Supreme Court's reasoning in this case cannot be reconciled with that principle. That court reasoned that, because the IAD does not contain an express exception for "technical" or "*de minimis*" breaches, excusing such errors would be tantamount to judicial legislation. Pet. App. 8. But *Wrigley* holds the opposite to be true: That absent an indication of contrary intent, the maxim of *de minimis non curat lex*—that the law does not recognize insignificant errors—is part of the "background of legal principles against which all enactments," including the IAD, "are adopted, and which all enactments," including the IAD, "are deemed to accept." Indeed, the reasoning adopted by the Alabama Supreme Court in this case is virtually indistinguishable from the line of argument this Court rejected in *Wrigley*. In *Wrigley*, the State asserted that the "plain language of the statute bars * * * recognition of a *de minimis* exception, because" no such exception was expressly provided for. 505 U.S. at 231.

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165 (5th ed. 1984). And, in the law of contracts, one party's failure of performance cannot justify the dramatic remedy of excusing the other party's performance unless the breach is "material," or "goes to the root or essence of the contract." See 2 E. Allan Farnsworth, *Farnsworth on Contracts* § 8.16, at 442 (1990); 15 Richard A. Lord, *Williston on Contracts* § 44:55, at 231-232 (4th ed. 2000); 4 Arthur L. Corbin, *Corbin on Contracts* § 946, at 809, 811 (1951). See also *Mobil Oil Exploration & Producing S.E., Inc.* v. *United States*, 120 S. Ct. 2423, 2440-2441 (2000); *id.* at 2449 (Stevens, J., dissenting).

Here, the Alabama Supreme Court declined to excuse *de minimis* infractions because there is no "limitation[] in the statute expressly allowing 'technical' violations to occur." Pet. App. 8. This Court rejected the State's "plain language" argument in *Wrigley* because the *de minimis* principle is deemed accepted by "every statute" absent a contrary indication. The Court should for the same reasons reject the Alabama Supreme Court's "plain language" argument here.[9]

That result is particularly appropriate in light of the fact that the rule against cognizance of non-prejudicial defects finds universal application through the criminal procedure doctrine of harmless error, under which courts will not vacate or reverse convictions unless the asserted error affected the defendant's substantial

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[9] This Court has construed other federal statutes restricting the scope of permissible government conduct, including Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510 *et seq.*—the principal federal wiretapping statute— in a manner consistent with that principle. For example, the Court has rejected the contention that "every failure to comply fully with any requirement provided in Title III would render the interception of wire or oral communications 'unlawful'" within the meaning of Title III so as to require the suppression of the evidence so obtained. *United States* v. *Donovan*, 429 U.S. 413, 433 (1977) (quoting *United States* v. *Chavez*, 416 U.S. 562, 574-575 (1974)). Instead, the Court held, the exclusionary rule applies where the requirement of Title III that was allegedly violated serves a "substantive" and "central" role in the statutory purpose of preventing "unwarranted use of wiretapping or electronic surveillance." *Chavez*, 416 U.S. at 578. See *Donovan*, 429 U.S. at 433-434 ("[S]uppression is required only for a 'failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device.'") (quoting *United States* v. *Giordano*, 416 U.S. 505, 527 (1974)).

rights. See *Chapman* v. *California*, 386 U.S. 18, 22 (1967) ("All 50 States have harmless-error statutes or rules."). The Federal Rules of Criminal Procedure, for example, provide that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Fed. R. Crim. P. 52(a). See also 28 U.S.C. 2111. The Alabama Rules of Appellate Procedure similarly provide that "[n]o judgment may be reversed or set aside * * * unless * * * the error complained of has probably injuriously affected substantial rights of the parties." Ala. R. App. P. 45. The harmless error doctrine, this Court has explained, "is essential to preserve the 'principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error.'" *Arizona* v. *Fulminante*, 499 U.S. 279, 308 (1991) (quoting *Delaware* v. *Van Arsdall*, 475 U.S. 673, 681 (1986)).

Nothing in the text of the IAD or its history suggests that it was meant to preclude application of the principle of *de minimis non curat lex*, or to eliminate the application of the related doctrine of harmless error. To the contrary, on its face, the IAD, including Article IV(e), is silent with respect to those doctrines. Last Term, this Court confronted similar silence in the IAD with respect to the effect of waiver or forfeiture of the speedy-trial right provided by that Act. See *Hill*, 528 U.S. at 114 ("No provision of the IAD prescribes the effect of a defendant's assent to delay on the applicable time limits."). In light of that silence, the Court concluded that the rights provided by the IAD are, like almost all other rights of a criminal defendant, subject

to waiver. *Id.* at 663-664.[10] The Court should similarly hold that the purported violations of Article IV(e) at issue here, like almost all other procedural errors in the criminal process, are subject to the *de minimis* principle and thus the rule that they cannot form the basis of relief unless they affect substantial rights.[11]

The rule of liberal construction provided by the IAD itself, as well as the IAD's legislative history, both support that result. Article IX of the IAD, which the Alabama Supreme Court's opinion did not mention, states that the "agreement shall be liberally construed *so as to effectuate its purposes.*" IAD, Art. IX (emphasis added). Construing the IAD as abrogating the *de minimis* and harmless error principles would, as the above discussion attests, undermine the IAD's purpose. See pp. 15-20, *supra.* The anti-shuttling provision is designed to prevent transfers and re-transfers between

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[10] Indeed, the Court explained that, even though it was possible to draw a "negative implication" from the statutory text, that implication was "not clear enough to constitute the 'affirmative indication' required to overcome the ordinary presumption that waiver is available." *Hill*, 528 U.S. at 116.

[11] That is not to say that Congress implicitly intends to exempt from the scope of all of its criminal laws those violations that might be argued to be "relatively trivial." See *United States* v. *Wells*, 519 U.S. 482, 498 (1997). The question is one of the intent of the drafters. In construing criminal laws, this Court has made clear that "the first criterion in the interpretive hierarchy" is "a natural reading of the full text." *Id.* at 490; see *Salinas* v. *United States*, 522 U.S. 52, 57 (1997) ("Courts in applying criminal laws generally must follow the plain and unambiguous meaning of statutory language."). In the present context, however, involving application of a procedural regime governing prisoners who face charges in another jurisdiction, application of the *Wrigley* principle is consistent with the purpose of the IAD, and there is no countervailing indication that it should not be applied.

different States from disrupting the prisoner's participation in rehabilitation and training programs in the institution in which he is incarcerated. Where, as here, the prisoner is removed from federal custody for only a day, is transferred a relatively moderate distance for arraignment, and promptly returned with no apparent interruption of his participation in rehabilitative programs, the transfer poses no threat to that purpose. The contrary rule, in contrast, would. Under it, a prisoner would have to be kept away—for the sometimes lengthy period between arraignment and trial—from the institution to which he had become accustomed and from any training and rehabilitation programs there in which he might be enrolled; the prisoner, moreover, would likely end up confined in a pre-trial facility that offers no such programs. See pp. 16-20, *supra*; Pet. App. 28 (explaining that, in this case, respondent "certainly would not receive much rehabilitation in a county jail"). There is no warrant for reading the IAD in a manner that is inconsistent with settled background principles, when the result is to contradict the statute's underlying purpose. See *Roy*, 771 F.2d at 60 ("Construing the Agreement to have been violated in [such] circumstances * * *, thereby precipitating serious interruption of rehabilitative programs, would not comport with the requirement that the Agreement should be 'liberally construed so as to effectuate its purposes.' Art. IX."). That is especially true where, as here, such a construction would provide criminal defendants with a windfall, a result the IAD was supposed to avoid. See Council of State Governments, *supra*, at 76-77 (agreement "gives [the defendant] no greater opportunity to escape just conviction"); S. Rep. No. 1356, 91st Cong., 2d Sess. 2 (1970) ("The agreement gives the

prisoner no greater opportunity to escape a conviction.").

"Whether a particular activity is a *de minimis* deviation from a prescribed standard must, of course, be determined with reference to the purpose of the standard." *Wrigley*, 505 U.S. at 232. In this case, there can be little doubt that any violation of the IAD was *de minimis* and did not affect respondent's "substantial rights." Respondent was out of the federal prison for only a day; there is no evidence that his participation in federal training programs was affected; and the local Covington County, Alabama, jail where respondent would have had to remain for the month between arraignment and trial absent his prompt return could offer him none of the programs and services available in the federal facility to which he had become accustomed. We do not mean to suggest that the *de minimis* principle or harmless error rule would excuse repeated and vexing transfers between jurisdictions, transfers between distant institutions, or return after an extended period in the custody of the receiving State. But returning a prisoner to a federal facility after an overnight stay with the charging State not only imposes no injury on the prisoner, but serves his interests and those the IAD seeks to protect. Under such circumstances, the *de minimis* principle and harmless error doctrine preclude application of the harsh sanction of dismissal with prejudice.

CONCLUSION

Accordingly, the judgment of the Supreme Court of Alabama should be reversed.

Respectfully submitted,

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APPENDIX

1. The Compact Clause of the United States Constitution, Art. 1, § 10, Cl. 3, provides:

> No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

2. Section 2111 of Title 28 of the United States Code provides:

§ 2111. Harmless error

> On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

3. The Interstate Agreement on Detainers Act, Title 18 of the United States Code Appendix 2, provides as follows:

§ 1. Short title

This Act may be cited as the "Interstate Agreement on Detainers Act".

§ 2. Enactment into law of Interstate Agreement on Detainers

The Interstate Agreement on Detainers is hereby enacted into law and entered into by the United States

on its own behalf and on behalf of the District of Columbia with all jurisdictions legally joining in substantially the following form:

"The contracting States solemnly agree that:

"ARTICLE I

"The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

"ARTICLE II

"As used in this agreement:

"(a) 'State' shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

"(b) 'Sending State' shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III

hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

"(c) 'Receiving State' shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to article III or article IV hereof.

"ARTICLE III

"(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided*, That, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

"(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, com-

missioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

"(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

"(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

"ARTICLE IV

"(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated: *Provided*, That the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request: *And provided*

further, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

"(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving State who has lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

"(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

"(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the execu-

tive authority of the sending State has not affirmatively consented to or ordered such delivery.

"(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"ARTICLE V

"(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

"(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

"(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

"(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

"(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

"(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

"(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

"(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the

extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

"(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

"(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

"ARTICLE VI

"(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is

unable to stand trial, as determined by the court having jurisdiction of the matter.

"(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

"ARTICLE VII

"Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

"ARTICLE VIII

"This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law. A State party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any State shall not affect the status of any proceedings already initiated by inmates or by State officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

"ARTICLE IX

"This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement

and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters."

§ 3. Definition of term "Governor" for purposes of United States and District of Columbia

The term "Governor" as used in the agreement on detainers shall mean with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Mayor of the District of Columbia.

§ 4. Definition of term "appropriate court"

The term "appropriate court" as used in the agreement on detainers shall mean with respect to the United States, the courts of the United States, and with respect to the District of Columbia, the courts of the District of Columbia, in which indictments, informations, or complaints, for which disposition is sought, are pending.

§ 5. Enforcement and cooperation by courts, departments, agencies, officers, and employees of United States and District of Columbia

All courts, departments, agencies, officers, and employees of the United States and of the District of Columbia are hereby directed to enforce the agreement on detainers and to cooperate with one another and with all party States in enforcing the agreement and effectuating its purpose.

§ 6. Regulations, forms, and instructions

For the United States, the Attorney General, and for the District of Columbia, the Mayor of the District of Columbia, shall establish such regulations, prescribe such forms, issue such instructions, and perform such other acts as he deems necessary for carrying out the provisions of this Act.

§ 7. Reservation of right to alter, amend, or repeal

The right to alter, amend, or repeal this Act is expressly reserved.

§ 8. Effective Date

This Act shall take effect on the ninetieth day after the date of its enactment.

§ 9. Special Provisions when United States is a Receiving State

Notwithstanding any provision of the agreement on detainers to the contrary, in a case in which the United States is a receiving State—

(1) any order of a court dismissing any indictment, information, or complaint may be with or without prejudice. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: The seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of the agreement on detainers and on the administration of justice; and

(2) it shall not be a violation of the agreement on detainers if prior to trial the prisoner is returned

to the custody of the sending State pursuant to an order of the appropriate court issued after reasonable notice to the prisoner and the United States and an opportunity for a hearing.

4. Federal Rule of Criminal Procedure 52 provides:

Rule 52. Harmless Error and Plain Error

(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

5. Alabama Rule of Appellate Procedure 45 provides:

Rule 45. Error without injury.

No judgment may be reversed or set aside, nor new trial granted in any civil or criminal case on the ground of misdirection of the jury, the giving or refusal of special charges or the improper admission or rejection of evidence, nor for error as to any matter of pleading or procedure, unless in the opinion of the court to which the appeal is taken or application is made, after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected substantial rights of the parties.

JAN 25 2001

(5)

No. 00-492

Supreme Court, U.S.
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In The

Supreme Court of the United States

STATE OF ALABAMA,

Petitioner,

v.

MICHAEL HERMAN BOZEMAN,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Alabama

BRIEF OF THE NATIONAL ASSOCIATION OF EXTRADITION OFFICIALS AS AMICUS CURIAE IN SUPPORT OF THE STATE OF ALABAMA

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27 pp

QUESTION PRESENTED

Does the transfer of a prisoner from federal custody to state custody for a brief period of time for purposes of a pretrial matter, and prompt transfer back to federal custody before the disposition of outstanding charges, require a dismissal of pending charges under the Interstate Agreement on Detainers Act (IADA) even when no prejudice or harm to the prisoner is either alleged or demonstrated?

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INTEREST OF THE AMICUS[1]

Your amicus, National Association of Extradition Officials, is a network of cooperating states formed over thirty-six years ago to provide an organization to promote the consistent application of the Uniform Criminal Extradition Act and other rendition statutes including the IADA. The Association's membership includes all fifty states, District of Columbia, Puerto Rico and Virgin Islands.

The Association urges the Court to reverse the decision of the Alabama Supreme Court which held that the State of Alabama violated the "anti-shuffling" provision of Article IV(e) of the IADA. This case presents an important question affecting the Association's interest in successfully accomplishing the transfer of prisoners for the purpose of disposal of outstanding charges which comports with the spirit and purpose of the IADA.

This concern is of particular moment where, as here, a prisoner is transferred for a brief time and promptly returned to the sending state without trial. The law should not be read so literally as to allow this type of procedural defect to provide the basis for the dismissal of outstanding charges.

The purpose of the IADA is to encourage the expeditious and orderly disposition of outstanding criminal

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[1] The parties have consented to the filing of this brief.

Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

charges in order to minimize the interruption of a prisoner's rehabilitation programs. The analysis employed by the Alabama Supreme Court, if accepted, would drastically undercut the spirit of this Act. Furthermore, none of the actions taken by the State of Alabama can be said to have been contrary to the purpose of the Act. The Association, therefore, urges the Court to reverse the judgment below to insure the integrity of the rendition process.

SUMMARY OF THE ARGUMENT

While the brief transfer of a prisoner that does not result in a trial may constitute a technical violation of the Interstate Agreement on Detainer Act, such a transfer should not form the basis of a dismissal of outstanding charges.

The purpose of the IADA is to encourage the expeditious and orderly disposition of outstanding criminal charges. One important reason for this purpose is to minimize the interruption of a prisoner's rehabilitation programs occasioned by repeated transfers.

In addressing the issue of this type of transfer two federal circuits (Third and Tenth) have taken a literal approach to the "anti-shuffling" provisions of the Act. This was the approach adopted by the Alabama Supreme Court in this case in finding that a dismissal was warranted. On the other hand, the balance of the circuits that have addressed this issue (First, Second, Fifth, Seventh, and Ninth) have looked to the purpose of the law and

have determined a dismissal is not appropriate where no prejudice is shown to the prisoner's rehabilitation.

A balancing test that examines certain central concerns such as the duration of the transfer and any prejudice such a transfer may have had on the prisoner's rehabilitation better serves the purpose of the Act.

Furthermore, both the nature of the right asserted (statutory) and the nature of the remedy (a remedy harsher than even that provided for violations of certain constitutional rights) underscore the need for a balancing test as opposed to a per se rule.

By taking such a literal approach to the Act, the Alabama Supreme Court did not consider the effect this type of transfer had on the prisoner's rehabilitation. A main reason for the Act is thereby frustrated by such a decision.

Furthermore, it is the position of your amicus that based on Bozeman's obvious familiarity with his rights under the IADA, by failing to object to his return to federal custody without trial effectively waived his right to object to any violation of the IADA.

ARGUMENT

I. The IADA Should Not Be Applied In A Way That Contradicts Its Stated Goal.

A. The Purposes Of The Interstate Agreement On Detainers Act ("IADA") And Its "Speedy Trial" Provisions.

The goal of the IADA is to encourage the expeditious and orderly disposition of outstanding criminal charges and determination of the proper status of any and all detainers based on untried indictments, information, and complaints. The purpose underlying this goal is that detainers based on such untried charges obstruct programs of prisoner treatment and rehabilitation. *United States v. Hall*, 974 F.2d 1201 (9th Cir. 1992); *Carchman v. Nash*, 473 U.S. 716, 720, 105 S.Ct. 3401, 3403 (1985); *State v. Fuller*, 560 N.W.2d 97 (Minn. App. 1997); *State v. Leisure*, 838 S.W.2d 49 (Mo. App. 1992). In fact, some courts state that the main purpose of the Act is to prevent interruption of prisoner rehabilitative efforts. *United States v. Daniels*, 3 F.3d 25, 27 (1st Cir. 1993); *United States v. Taylor*, 947 F.2d 1002, 1003 (1st Cir. 1991). A second purpose of the Act is the elimination of possible adverse psychological effects upon a sentenced prisoner created by the presence of long-standing detainers in his prison file. *See, e.g. United States v. Lawson*, 736 F.2d 835, 839 (2nd Cir. 1984); *Stroble v. Anderson*, 587 F.2d 830, 835-36 (6th Cir. 1978), *cert. denied*, 440 U.S. 940, 99 S.Ct. 1289, 59 L.Ed.2d 499 (1979); *United States v. Chico*, 558 F.2d 1047, 1048-49 (2nd Cir. 1977). This Act is codified in Alabama in Sections 15-9-80 through 15-9-88 of the 1975 Code of Alabama. (Appendix to Petition for Certiorari at 32-47).

Article III and Article IV are the provisions of the IADA used to effectuate the goal of this Act. *United States v. Mauro*, 436 U.S. 340, 349, 98 S.Ct. 1834, 1842 (1978). Article III provides the procedure used by prisoners, who have detainers filed against them, to demand a speedy disposition of the charges giving rise to the detainers. If the prisoner demands a speedy trial pursuant to the guidelines of Article III, the jurisdiction which filed the detainers is required to bring him to trial within 180 days.

Article IV, on the other hand, provides the procedure used by prosecutors who have lodged a detainer against a prisoner in another jurisdiction. This Article allows such a prosecutor to secure temporary custody over a prisoner for disposition of outstanding charges against the prisoner. Article IV(c) requires trial to commence within 120 days of the prisoner's arrival in the requesting jurisdiction unless a continuance is granted or good cause is shown in open court with the prisoner or his counsel present.

Article III(d) and Article IV(e) both contain "anti-shuffling" provisions which are essentially identical and provide:

"If a trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."

B. The Goal Of The "Anti-Shuffling" Provision.

The goal of the Anti-Shuffling provision, Article IV(e), "is to insure prompt disposition of detainers." *Brown v. Mitchell*, 598 F.2d 835, 837 (4th Cir. 1979), *cert. denied*, 449 U.S. 1123, 101 S.Ct. 939, 67 L.Ed.2d 109 (1981). This provision "furthers the goal of the IADA which is to prevent transfer back and forth between competing jurisdictions, its theory being that such transfers undermine the right to speedy trial and the rehabilitative process of the system in which the prisoner is currently serving a sentence." *Cooney v. Fulcomer*, 886 F.2d 41, 44 (3rd Cir. 1989). (Citing *United States v. Williams*, 615 F.2d 585, 588 (3rd Cir. 1980)).

C. Brief Transfers That May Be Technical Violations Of The "Anti-Shuffling" Provisions Are Still Wholly Consistent With The Purposes And Goals Of The Interstate Agreement On Detainers Act.

Bozeman was transferred very briefly on January 23, 1997, from federal custody in Marianna, Florida, to Covington, Alabama, for arraignment on January 24, 1997, on state charges. He was returned to federal prison the very next day (Appendix to Petition for Certiorari at 28). Although his state charges were not disposed of on January 24, 1997, there is neither evidence nor any allegation that this brief transfer had an impact on his rehabilitation programs at the federal prison. As the circuit court judge in this case said:

> "It made much sense to bring him into the county briefly to see to those matters and

> thereupon return him to the surroundings to which he was accustomed. That course appears to have been conservative of the defendant's interest in maintaining any course of rehabilitation available to him in federal prison. He certainly would not receive much rehabilitation in county jail [as a pre-trial detainee]." (Appendix to Petition for Certiorari at 28.)

Even though brief transfers technically constitute "anti-shuffling" violations, they can, nevertheless, have little or no impact on rehabilitative programs and still permit the prisoner to have his case disposed of within the IADA "speedy trial provisions." For example, in the case at bar, the Covington prosecutor's office secured the custody of Bozeman for a second time, pursuant to Article IV, one month after his arraignment. He was convicted on all five counts of the indictment the next day, February 28, 1997. (Petition for Certiorari 7 citing C.120-21; R. 192-93) He was sentenced on May 21, 1997. (Petition for Certiorari 8 citing C.108-109) Bozeman's charges were clearly disposed of within the 120 day "speedy trial" provision of Article IV(c). In similar situations, other courts have ruled that a dismissal was not required where the "anti-shuffling" provision was technically violated when the prisoner was returned a second time to the state for trial within the IADA "speedy trial" deadline. *State ex rel. Fetters v. Hott,* 318 S.E.2d 446, 448-449 (W.Va. 1984); *See also State v. Fuller,* 560 N.W.2d 97 (Minn. App. 1997).

Brief transfers, such as the one in this case, may actually further the Act's purpose of not having a prisoner's rehabilitation programs interrupted for unreasonable periods of time. *See e.g. United States v. Daniels, supra,* 3 F.3d at 27-28 (The First Circuit, at page 28, footnote 3,

states that it could "hardly think of a greater disruption in rehabilitative services" than when a prisoner has to remain in the custody of a requesting state from the date of his arraignment until the date his case is finally disposed of.) *See also United States v. Taylor*, 947 F.2d 1002, 1003 (1st Cir. 1992), *cert. denied*, 504 U.S. 991, 112 S.Ct. 2982 (1992) (Brief transfer allowed for speedy arraignment). Although dismissal is the remedy provided in the "anti-shuffling" provisions, the majority of federal courts that have addressed the issue of brief transfers such as these have held that dismissal is not mandatory where the transfer did not affect the prisoner's rehabilitation. *United States v. Johnson*, 953 F.2d 1167, 1171 (9th Cir. 1992); *United States v. Taylor*, 861 F.2d 316, 319 (1st Cir. 1988); *Malone v. United States*, 482 A.2d 768 (D.C. App. 1984); *See also United States v. Roy*, 830 F.2d 628, 636 (7th Cir. 1987) and *State v. Sassoon*, 242 S.E.2d 121, 123 (Ala. 1978) (citing *United States v. Chico, supra*, 558 F.2d at 1049).

The "anti-shuffling" provisions were not intended to be used as a sword by prisoners for the purpose of dismissing potentially serious crimes based solely on technical violations. Yet this appears to be the only purpose served by dismissing charges where the violation covered a brief time period having little, or no, impact on the prisoner's rehabilitation programs. Justice Hill, concurring in *Price v. State*, 237 Ga. 352, 357, 227 S.E.2d 368, 370 (1976) anticipated that intelligent prisoners (referring to them as "interstate bandits") could use the IADA to have their charges dismissed in different jurisdictions instead of seeking to expedite their trials pursuant to the same Act. *See also State v. Sassoon, supra*, 242 S.E.2d at 123. The present appeal presents a very similar case. Bozeman was not interested in having a quick arraignment and

trial in Covington County so that he could return to his rehabilitation programs in federal prison. He was clearly only interested in getting his state charges dismissed. This is evidenced by his failure either to request that he remain in Covington County until his trial or object to the notice of arraignment as opposed to trial. Instead, he filed a motion to dismiss these charges on the very same day he returned to federal custody on January 24, 1997. (Appendix to Petition for Certiorari at 28) The IADA was never intended to be used in this manner. Allowing prisoners to do so only thwarts the purpose of the Act.

D. Two Approaches To The Interpretation Of The IADA

The issue of whether or not a brief transfer under the IADA without a trial is consistent with the purposes of the Act or is a sufficient violation of the Act to warrant dismissal of the outstanding charges has been addressed in different ways by the various federal circuits. A "split" exists among these circuits.

The Third and Tenth Circuits have read the Act literally and found it to require a dismissal under such circumstances. *See, e.g. United States v. Thompson*, 562 F.2d 232, 234 (3rd Cir. 1977) (*en banc*), *cert. denied*, 436 U.S. 949, 98 S.Ct. 2858, 56 L.Ed.2d 793 (1978); *United States v. Schrum*, 638 F.2d 214 (10th Cir. 1981), *aff'g*, 504 F.Supp. 23 (Kan. 1980).

On the other hand, the majority of circuits (First, Second, Fifth, Seventh and Ninth Circuits) have chosen to examine the particular circumstances in light of the purpose of the law and have consistently held no dismissal is

warranted. *See, e.g. United States v. Taylor*, 947 F.2d 1002 (1st Cir. 1991), *cert. denied*, 504 U.S. 991, 112 S.Ct. 2982, 1191 L.Ed.2d 599 (1992); *United States v. Roy*, 771 F.2d 54 (2nd Cir. 1985), *aff'g*, 597 F.Supp. 1210 (Conn. 1984); *Sassoon v. Stynchombe*, 654 F.2d 371 (5th Cir. 1981); *United States v. Roy*, 830 F.2d 628 (7th Cir. 1987) and *United States v. Johnson*, 953 F.2d 1167 (9th Cir. 1992), *cert. denied*, 504 U.S. 809, 113 S.Ct. 226, 121 L.Ed.2d 163 (1992).

Your amicus believes that the latter approach, which looks to the spirit and purpose of the Act rather than interpreting the Act so narrowly as to defeat that purpose, is correct. Unfortunately, none of the courts employing this approach has articulated any test by which each case can be judged. As a result, these decisions offer little predictive value.

Within this framework, your amicus would urge that this Court disclaim establishing a per se rule but instead establish a balancing test to be employed on an ad hoc basis to determine whether the harsh remedy of dismissal is warranted under these circumstances.

E. A Balancing Test Employed On An Ad Hoc Basis Rather Than A Rigid Semantic Approach Better Serves The Purposes Of The Interstate Agreement On Detainers Act.

It is a well-established principle of statutory construction that a statute should not be applied strictly in accordance with its literal meaning where to do so would pervert its manifest purpose. *In re Adamo*, 619 F.2d 216, 221-222 (2nd Cir 1980), *cert. denied*, 449 U.S. 834, 101 S.Ct. 125, 66 L.Ed.2d 52 (1980).

While your amicus recognizes that courts should seek to apply the law as drafted, it is also true that the "surest way to misinterpret a statute or a rule is to follow its literal language without reference to its purpose," or without regard to a result that would be unreasonable or absurd. *Viacom International, Inc. v. F.C.C.*, 672 F.2d 1034, 1040 (2nd Cir. 1982).

Although the literal meaning of the words chosen by the drafters should be respected, we urge this Court not to follow a rigid semantic approach to statutory construction which would override common sense and evident statutory purpose.

The IADA has been described variously as a "set of procedural rules which do not involve fundamental constitutional rights." *United States v. Palmer*, 574 F.2d 164, 167 (3rd Cir. 1978), *cert. denied*, 437 U.S. 907, 98 S.Ct. 3097, 57 L.Ed.2d 1138 (1978) and that the "protections created by the IADA are statutory rights which are not founded upon constitutional rights." *Yellen v. Cooper*, 828 F.2d 1471, 1474 (10th Cir. 1987).

Admittedly, the application of a constitutional standard is inappropriate when the violation of a statutory right is at issue. Nevertheless, this Court's decision related to the right to a speedy trial in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) is instructive. *Barker* addressed certain central concerns that persuaded this Court that a balancing test to be applied on an ad hoc basis best served those concerns. In so holding, this Court rejected two suggested approaches which the court described as "rigid". Your amicus suggests to the Court that the same central concerns exist in this case and

therefore we urge this Court to choose the same alternative in this case.

In *Barker,* this Court cited such basic concerns involved in the speedy disposal of charges as the necessity that all defendants be treated according to "decent and fair procedures," that the backlog of cases has lead to manipulation of the system by defendants, the cost of lengthy pretrial detention and, most importantly for our purposes, the delay between arrest and punishment may have a detrimental effect on rehabilitation. *Barker v. Wingo, supra,* 407 U.S. at 519-520, 92 S.Ct. at 2186-87.

In deciding that a balancing test was appropriate, this Court also took into consideration the harshness of the remedy. Like the IADA, violation of the Sixth Amendment speedy trial provision requires dismissal. In this context, the *Barker* Court observed "[t]his is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free without having been tried". *See also* N.16, *Barker v. Wingo, supra,* 407 U.S. at 522, 92 S.Ct. at 2188.

Ultimately, the court specifically rejected the "inflexible approaches" and accepted a balancing test, in which the conduct of both the prosecution and the defendant are weighed. In the court's view, such a test "necessarily compels courts to approach speedy trial cases on an ad hoc basis." The Court then identified four factors to be assessed when a court determines if a Sixth Amendment violation took place: length of delay, the reason for the delay, defendant's assertion of his right, and prejudice to the defendant. *Barker v. Wingo, supra,* 407 U.S. at 530, 92 S.Ct. at 2192.

Your amicus urges this Court to follow the reasoning in *Barker* and apply a balancing test in this case. Although none of the circuit courts that examined this issue on an ad hoc basis followed a specific balancing test, these courts have consistently concentrated on certain factors which could provide some guidance in the formulation of such a test.

Where there is a delay because of the kind of transfer that occurred herein, circuits have balanced the length of the interruption against any prejudice to the prisoner that may have resulted. *Sassoon v. Stynchombe, supra,* 654 F.2d at, 374 (5th Cir. 1981) (refusing to apply Article IV(e) mechanically because the inmate's interest in pursuing his rehabilitative education in the sending jurisdiction was not prejudiced . . . a brief removal and prompt return prior to trial is consonant with the intention of the IADA); *United States v. Taylor,* 861 F.2d 316 (1st Cir. 1988) (IADA not violated when prisoner returned without a trial because he suffered only a one day interruption that did not prejudice him); *United States v. Johnson, supra,* 953 F.2d at 1170 (9th Cir. 1992), *cert. denied,* 506 U.S. 879, 113 S.Ct. 226, 121 L.Ed.2d 163 (1992) (brief transfers permissible where there was no evidence that they interfered with the prisoner's interest or participation in rehabilitation program or where he was denied, threatened with the denial of, or feared losing any privileges because of the pending charges); *United States v. Roy,* 597 F.Supp. 1210 (Conn. 1984); *aff'd by United States v. Roy,* 771 F.2d 54 (2nd Cir. 1985) (no evidence that prisoner's brief transfer obstructed his rehabilitation . . . no indication that he suffered any adverse psychological effects as a result of his brief stay); *United States v. Roy, supra,* 830 F.2d at 636

(7th Cir. 1987) (no violation of anti-shuffling provisions of Article IV of the IADA where there was no real interruption of prisoner's state imprisonment resulting from an overnight stay at another facility). It should be noted that, although prejudice is not a dispositive factor in determining whether an indictment should be dismissed due to a violation of Article IV(e), no policy of the IADA would be advanced by finding a dismissal proper where no prejudice whatsoever existed.

For several reasons, your amicus urges this Court to reject the restrictive interpretation of the IADA taken by the Third and Tenth Circuits and the Alabama Supreme Court in this case. First, the issue does not involve a fundamental right or a constitutional rule. Rather, this is a rule governing a statutory, nonfundamental right. This is an important consideration in light of the harshness of the remedy.

> Clearly Article IV(e) of the IADA amounts to nothing more than a procedural rule, and the right it protects in no way affects the fairness and accuracy of the fact-finding procedure. Nor does it preserve or affect other due process or trial rights. Rather, it involves an unrelated right to rehabilitation without interruption in connection with incarceration on a prior sentence. Thus, a claim under IV(e) can hardly be construed as jurisdictional . . . The fact that Congress has provided a stringent remedy for violation of the rule does not alter the procedural nature or nonfundamental basis of the rule itself.

Gray v. Benson, 458 F.Supp. 1209, 1213 (Kan. 1978), *aff'd*, 608 F.2d 325 (10th Cir. 1979) (citations omitted).

The remedy prescribed by the IADA is more severe than that provided even for violations of certain constitutional rights. *See Barker v. Wingo, supra,* 407 U.S. at 522, 92 S.Ct. at 2188). Both the nature of the right (statutory) and the nature of the remedy (dismissal) underscore the need for a balancing test as opposed to a per se rule.

Another factor is the reason for the transfer. The inquiry is whether the transfer was initiated by the prisoner or the prosecution. *See e.g. United States v. Ford,* 550 F.2d 732 (2nd Cir. 1977), *aff'd sub nom. United States v. Mauro,* 436 U.S. 340, 98 S.Ct. 1834, 56 L.Ed.2d 329 (1978) (rights under the Act are waived by a prisoner's request for transfer).

The right protected by Article IV(e) is that of a prisoner to have his rehabilitation free of the interruptions occasioned by repeated transfers. *United States v. Ford, supra,* 550 F.2d at 742 (2nd Cir. 1977), *aff'd United States v. Mauro,* 436 U.S. 340, 98 S.Ct. 1834, 56 L.Ed.2d 329 (1978). This right of a prisoner to uninterrupted rehabilitation is purely statutory. It is unlike a fundamental constitutional right which can be waived only under the strict waiver standard set out in *Johnson v. Zerbst. See Gray v. Benson,* 458 F.Supp. 1209 (Kan. 1978), *aff'd,* 608 F.2d 825 (10th Cir. 1979) (citing *Johnson v. Zerbst,* 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed.2d 1461 (1938).)

Under the facts in this case, the literal application of the dismissal provision required that the Act's intended purpose be disregarded. The violation of the IADA was a trifling and insignificant one, in the nature of a procedural defect. To release Bozeman by a mechanical application of the statute would constitute an inequity

and "a result that Congress manifestly would not have wanted if the prospect of such application had been considered." *United States v. Perdue Farms, Inc.*, 680 F.2d 277, 286 (2nd Cir. 1982) (Newman, J., concurring).

Your amicus urges this Court to accept the more expansive interpretation of the statute taken by the majority of circuits. First, no purpose of the drafters in enacting the IADA was thwarted by the conduct of the Alabama authorities. Bozeman made no claim that his overnight detention in the Covington County jail prejudiced any rehabilitation or education programs he was undergoing at the federal facility in Florida. Furthermore, there has been no indication that Bozeman suffered any adverse psychological effects as a result of his brief stay in Covington County on January 23-24, 1997. In fact, his brief detention in state custody followed by his prompt return to federal custody worked to his benefit rather than to his detriment. *See Sassoon v. Stynchombe, supra*, 654 F.2d at 374 (5th Cir. 1981) (release under Article IV(e) of the IADA "not justified where no legitimate interest of the prisoner is defeated by the violation . . . [n]o protection is necessary where no injury is threatened"). In other words, had Bozeman been kept in state custody from arraignment through sentencing, the interference with any rehabilitative programs he may have been undergoing would have been worse. Being "shuffled" back to federal prison actually promoted the purpose of the IADA. Additionally, all pending state charges were processed against him in an expeditious and orderly manner and all within the 120 day period required under the IADA.

The instant case presents an attempted misuse of the Act. Bozeman is seeking to use the provisions of the IADA not for the purpose of protecting any legitimate interest he may feel is at stake but rather to simply secure his release from the sentence imposed by the State of Alabama.

Under these circumstances, justice and good sense compel an interpretation of the IADA which conforms to the intention and spirit of the Act even if it is not within the letter of the enactment. *See United States v. Witkovich*, 353 U.S. 194, 199, 77 S.Ct. 779, 782, 1 L.Ed.2d 765 (1957) (the "tyranny of literalness" should be avoided); *Crooks v. Harrelson*, 282 U.S. 55, 60, 51 S.Ct. 49, 50, 75 L.Ed. 156 (1930) (departure from plain language of a statute justified if adherence results in an absurdity which shocks "the general moral or common sense").

This conclusion is buttressed by Article IV of the IADA, which states in part, "[t]his agreement shall be liberally construed so as to effectuate its purposes."

This Court should recognize that a brief interruption of confinement that neither poses a threat to a prisoner's rehabilitation nor denies him any privileges is insufficient to require a dismissal of outstanding charges under Article IV(e) of the IADA.

II. Defendant's Actions In Failing To Object To His Return To Federal Custody Without Trial Effectively Waived His Right To Object To Any Violation Of The IADA.

Bozeman was transferred to Alabama on January 23, 1997, and arraigned the next day, January 24, 1997. From

the transcript of that hearing it is clear that those involved understood that Bozeman was to be returned to Florida after the arraignment. Bozeman was informed by the court that he was there for purposes of arraignment (R. January 24, 1997 Arraignment 5); that the court would allow him to complete the appointment of counsel form "before you leave" (R. January 24, 1997 Arraignment 11); and the court directed him to make sure he had the means to stay in communication with his attorney. Defense counsel then informed the court that he had Bozeman's address (R. January 24, 1997 Arraignment 12). Also at that time, defense counsel notified the court of possible violations of the IADA which he had to investigate (R. January 24, 1997 Arraignment 4). He was then transferred back to federal custody that same day. Even though Bozeman had counsel appointed to him at his arraignment, he filed an obviously already prepared pro se Motion to Dismiss his outstanding Alabama charges on the basis of a violation of Article IV(e) of the IADA on January 24, 1997 as well. (Petition for Certiorari 6 citing C.8-10)

Your amicus urges this Court to find that by failing to object to his transfer back to federal prison without a trial Bozeman impliedly consented to this transfer and thereby waived this violation or, in the alternative, is estopped, under the theory of "invited error", from asserting this right under the IADA. "A party may not complain on appeal of errors that he himself invited or provoked the [district] court . . . to commit." *United States v. Wells*, 519 U.S. 482, 486, 117 S.Ct. 921, 925, 137 L.Ed.2d 107 (1997) (citations omitted).

Bozeman is obviously someone very familiar with the protections offered by the IADA and understood his rights thereunder. Based on his actions, it appears that Bozeman had full knowledge of the IADA at the time he filed his pro se Motion to Dismiss. The fact that he knew to file his pro se Motion to Dismiss on the very day he was returned to federal custody indicates how well-versed he really was. Under these circumstances, there can be no real dispute that Bozeman knew his rights under the IADA. A knowing and intelligent waiver of the anti-shuffling provision therefore can be inferred from his failure to object to his transfer.

Moreover, because this is a statutory right, the waiver standard is not as strict as that for waiver of certain fundamental or constitutional rights. The concept of a knowing and intelligent waiver only applies to basic constitutional rights safeguarding a criminal defendant's right to a fair trial. This high standard for waiver does not apply in situations involving other constitutional or statutory rights. *Schneckloth v. Bustamonte*, 412 U.S. 218, 237, 93 S.Ct. 2041, 2052, 36 L.Ed.2d 854 (1973)

The basis of the statutory right at stake is to promote the rehabilitation of a prisoner that is free of the interruptions resulting from repeated transfers. *United States v. Ford, supra*, 550 F.2d at 742. This type of right is considered procedural or nonfundamental and in no way affects the fairness and accuracy of the fact-finding process. Balanced against this right is the substantial public interest in the finality of criminal convictions. *Wainwright v. Sykes*, 433 U.S. 72, 90, 97, S.Ct. 2497, 53 L.Ed.2d 594 (1977), *reh. denied*, 434 U.S. 880, 98 S.Ct. 241, 54 L.Ed.2d 163 (1977).

Based on his obvious familiarity with his rights under the IADA and considering the nature of the right at stake, your amicus asserts that Bozeman essentially consented to his transfer back to federal authorities when he raised no objection to the nature of the transfer. This "consent" was in the nature of a waiver of the violation or as an estoppel which prevents him from asserting the right. Either of these would prevent him from succeeding in this case.

The procedural defect in this case had no effect whatsoever on the fundamental fairness of the proceedings against him. Neither has Bozeman demonstrated any prejudice to his rehabilitation as a result of the challenged transfer.The public's substantial interest in the preservation of convictions outweighs a prisoner's interest in the statutory remedy for a violation of Article IV(e). *See Gray v. Benson, supra,* 458 F.Supp. at 1215.

CONCLUSION

This Court should reverse the decision of the Alabama Supreme Court.

Respectfully submitted,

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